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The Cultural Right to Practice Traditional Medicinal Knowledge in Zimbabwe

Chloe Giselle Frommer

Department of Anthropology

McGill University

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partial fulfillment of the requirements of a Masters of Arts.**

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Abstract

Cultural resources like traditional medicinal knowledge need to be recognized in their role tied to important regional practices in Zimbabwe. This is especially as a nexus of legal definitions for biological, intellectual and cultural resources will inform a National Sui Generis Legislation for the protection of these resources. Even further, because foreign pharmaceutical companies seeking plant genetic resources, called 'green-gold', benefit from derivatives of traditional medicinal knowledge it is important to protect these practices as part of an entire social and symbolic system. This system can be conceived as traditional medicinal knowledge is accessed, kept, shared, used and valued as a spiritual gift that links individuals, families and community in relationships. Change to this arrangement occurs when the derivatives of it are appropriated for local non-customary use in Zimbabwe's street markets, in a trade union of traditional-healers, as well as for research and development schemes. Acknowledging the spectrum of divergent interests and practices surrounding traditional medicinal knowledge is a prerequisite to creating a system of protections for it as a cultural resource. A National Sui Generis Legislation framework that clearly supports and protects the cultural right of local individuals and communities will thereby need to identify the important customary and non-customary regional practices around traditional medicinal knowledge and create entitlements to them accordingly.

Résumé

La valeur de ressources culturelles comme la connaissance médicinale traditionnelle a besoin d'être reconnue en lien avec leur usage régional au Zimbabwe. Une définition légale des ressources biologique, intellectuelle et culturelle est particulièrement nécessaire afin de créer une législation nationale sui generis qui protège ces ressources. La protection de la connaissance médicinale traditionnelle est d'autant plus essentielle que des compagnies pharmaceutiques étrangères à la recherche du « green gold », ces plantes aux ressources génétiques, bénéficient des dérivés. En tant que constituante d'un système social et symbolique, la connaissance traditionnelle médicinale doit être reconnue comme un cadeau spirituel liant les individus, les familles et la communauté. Or, ces arrangements sont modifiés lorsque les dérivatifs sont ré-appropriés pour des usages non coutumiers par les marchés en plein air du Zimbabwe, par les syndicats des guérisseurs traditionnels ainsi que pour des fins de recherche et de développement. La mise à jour de la gamme d'intérêts et de pratiques divergents qui entourent la connaissance médicinale traditionnelle constitue un préalable pour créer un système visant à la protéger en tant que ressource culturelle. Un cadre national législatif Sui Generis qui supporte et protège clairement les droits culturels des individus et communautés locales devra alors accorder ces droits en fonction de l'identification des différentes pratiques régionales coutumières et non coutumières entourant la connaissance médicinale traditionnelle.

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This thesis dwells on issues of intellectual/cultural resources. Because of this I can only insist that my friends, family, colleagues, informants, experiences and leaders also contributed to the content here – whether wittingly or not. However, academically:

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INTRODUCTION

This thesis examines the current legal nexus of plant genetic, intellectual and cultural resources such as traditional medicinal knowledge in Zimbabwe. To date, powerful transnational pharmaceutical companies have invested vast monies to obtain traditional information about medicinal plants in developing countries, called 'green-gold', yet disregarded the prior customary uses of traditional medicinal knowledge. However, when customary practices related to traditional medicinal knowledge (TMK) are perceived as a resource in a cultural symbolic system, it is evident they continue to be responsible for healing, ritual, cosmological, and social needs. Therefore, the practices of the traditional medicinal knowledge system need a unique system of protection formulated under National Sui Generis Legislation for Zimbabwe.

Hence, this thesis describes the customary/contemporary practices that maintain the traditional medicinal knowledge system in Zimbabwe. By reiterating how this cultural resource is accessed, kept, shared, used and valued as a spiritual gift that links individuals, families and community makes it possible to re-embed knowledge in practices deserving protection. However, while the practices of this system concern entitlements and rights to maintain customary ways, non-customary local practices also exploit information derived from traditional medicinal knowledge. Divergent interests in this resource include, (1) individual mercenary use in street markets, (2) consolidating political constituency as a trade union of traditional-healers, (3) gaining scientific advancements in university research, and (4) commercial profit in medicinal plant product development schemes. Although these avenues present a challenge to some

customary practices in Zimbabwe, they also invite the applications of other Zimbabweans interested in modern scientific, commercial and political applications of TMK.

Therefore, the second ambition of this thesis is to explore the possibilities of international, national and customary frameworks of protection and rights legislation that pertain to cultural resources, linked also to plant genetic and intellectual resources. The potential of intellectual property rights, community rights, cultural rights, and traditional resource rights in representing important local customary practices with traditional medicinal knowledge will be explored in conjunction with entitlements that may pertain to those and the broader spectrum of non-customary local interests. The basis of this examination will be used to provide several recommendations for a truly 'unique' National Sui Generis Legislation in Zimbabwe.

Zimbabwe

Zimbabwe is found in sub-Saharan Africa, North of South Africa, South of the Democratic Republic of Congo, Southeast of Malawi and Zambia, East of Botswana and West of Mozambique. A Bantu-speaking region, its primary cultural tradition is Shona, which possesses four linguistic variations – Kore Kore, Zezuru, Ndau and Karanga (Chiwome 1993). There are also Ndebele whose traditions are more closely linked to the Zulu residing in the South (Carniege 1970; Selby 1971). Other groups found in Zimbabwe include Tonga, Tswana, Chewa and Ndembu peoples (Beach 1980; Reynolds 1991; Turner 1964). Although members of all of these groups contribute to a strong cosmopolitan, economic and political constituency, two-thirds of Zimbabweans still uphold an agrarian lifestyle in the communal rural areas. The minority of European residents (one percent) represents the legacy of Zimbabwe's colonial history.

The biological diversity in Zimbabwe is as equally rich as the cultural diversity. High (*veld*) and low (*veld*) grasslands broken by wide granite hills (*kopje*) predominate, but a steep semi-tropical highland is found in the East while marshes and wetlands (*vleis* and *danbos*) are found in the north along the Zambezi River Escarpment. Lake Kariba and Victoria Falls also are highly specialized ecosystems. Medicinal plant resources are best known to transnational pharmaceutical companies even though animal diversity draws visitors from all over the world (Wyneberg 1999, 2000; Van Wyk, Outdshoorn, Gericke 1997). Yet, the biological sources of traditional medicinal knowledge can include any of the,

parts of plant roots, leaves, bark, stems, fruits, grasses, aloes, seeds, thorns, climbers...

As well as,

symbiotic insect-plant growths, as well as any part of an animal and its' excretions

(Chavanduka 1997: 3).

Two-thirds of Zimbabweans rely on a traditional healer, a *n'anga*, and his or her traditional medicinal knowledge for some aspect of their health needs in their lifetime (Chavanduka 1997). In addition to this, Chavanduka (1997) documented that traditional healers serve vital roles as community leaders and in facilitating traditional institutions such as marriage, courtships, childbirth, the appointment of elders to a council and regulating crop cultivation. Traditional medicinal knowledge in Zimbabwe largely moves through family apprenticeships consisting of an elder grandparent, aunt or uncle, in combination with an assistant, the *makumbi*, usually a child (Gelfand 1962, 1966). This ritualized inheritance of Shona traditional medicinal knowledge extends to most Bantu cosmologies shows Bourdillon (1976) and Reynolds (1996). Therefore, even though the

Republic of Zimbabwe combines persons from a variety of linguistic and cultural backgrounds from Africa, wide variation is not expected in the contemporary rituals associated with traditional medicinal knowledge.

The customs of TMK have even persisted today after colonial and missionary legacies left an image of traditional medicinal knowledge hard to alter. TMK practices were trivialized as “superstition” and the *n’angas* called “witch-doctors” (National Archives; Gelfand 1988: 1-19). Despite the efforts of missionaries and colonists to debase traditional healers reputation, it had been bolstered two decades ago due to their active role in the Second Liberation War. With acute timing, the same year the War was won and Independence gained (1980), traditional healers had positioned themselves as new political and economic players under the new Republic of Zimbabwe (formerly Rhodesia). They formed what now functions as a trade union of traditional healers called the Zimbabwe National Traditional Healers Association (ZINATHA) – with a readiness to fight for rights and benefits as well as recognition of their union as an important Zimbabwean institution (Chavanduka 1997). Over the past decade this organization has enumerated traditional healers in a registry and is now a nationally known presence.

However, post-Independence progress in Zimbabwe had been unsteady. In 2001, allegedly through violence and political intimidation, the twenty-year long uninterrupted terms of President Robert Mugabe and his ruling party ZANU- (PF) were extended through nationwide elections. Accusations and testimonies of political violence in the country stimulated rebuke and condemnation from the international financial and development community (*The Gazette* January 28, 2002). Yet, prior to these pressures had already been mounting in the country since the Structural Adjustment Programs

(SAPS) implemented by the International Monetary Fund (IMF) demanded decreased spending on social services (Stoneman 1989; Auret 1990). Pressures on the urban areas soon became displaced onto the rural areas, especially where land reforms became a rallying platform of many who did not support the urban labor interest - represented by the Movement for Democratic Change (MDC). Therefore, it is to be expected there is less domestic space amidst this political and economic situation for addressing civil and political rights, much less cultural rights, even if the country did not have an export bias over national cultural and biological resources.¹ Nonetheless, rights over a cultural resource like traditional medicinal knowledge are even more important now. A World Health Organization (WHO) statistic claims HIV/AIDS incidences span one-third of the population in sub-Saharan Africa. This, added to the growing trend of SAPS privatization that cuts into water, health care and other essential services, leaves few national institutional supports for poorer Africans. However, a precedent was set in Doha, Qatar when member-states of the World Trade Organization (WTO) conceded that Africa's HIV/AIDS health crisis is more important than any countries' intellectual property right.² Previously, an intellectual property case drawn under the WTO rules was filed against South Africa by the United States for its use of generic HIV/AIDS drugs (Bertrand and Kalafides 1999).³ This raised global scrutiny about the international institutional

¹ The Zimbabwean government has been accused by numerous civil society organizations including ZIMrights and Amnesty International, of abusing persons' basic freedoms. Zimbabwe's journalists have not had the freedom of the press and have suffered intimidation, kidnappings and physical violence.

² This occurred at the Doha Ministerial meeting of the members of the World Trade Organization (2001). A review of the results of the Doha Ministerial was obtained through the list serve service of *Progressive Response* (2002).

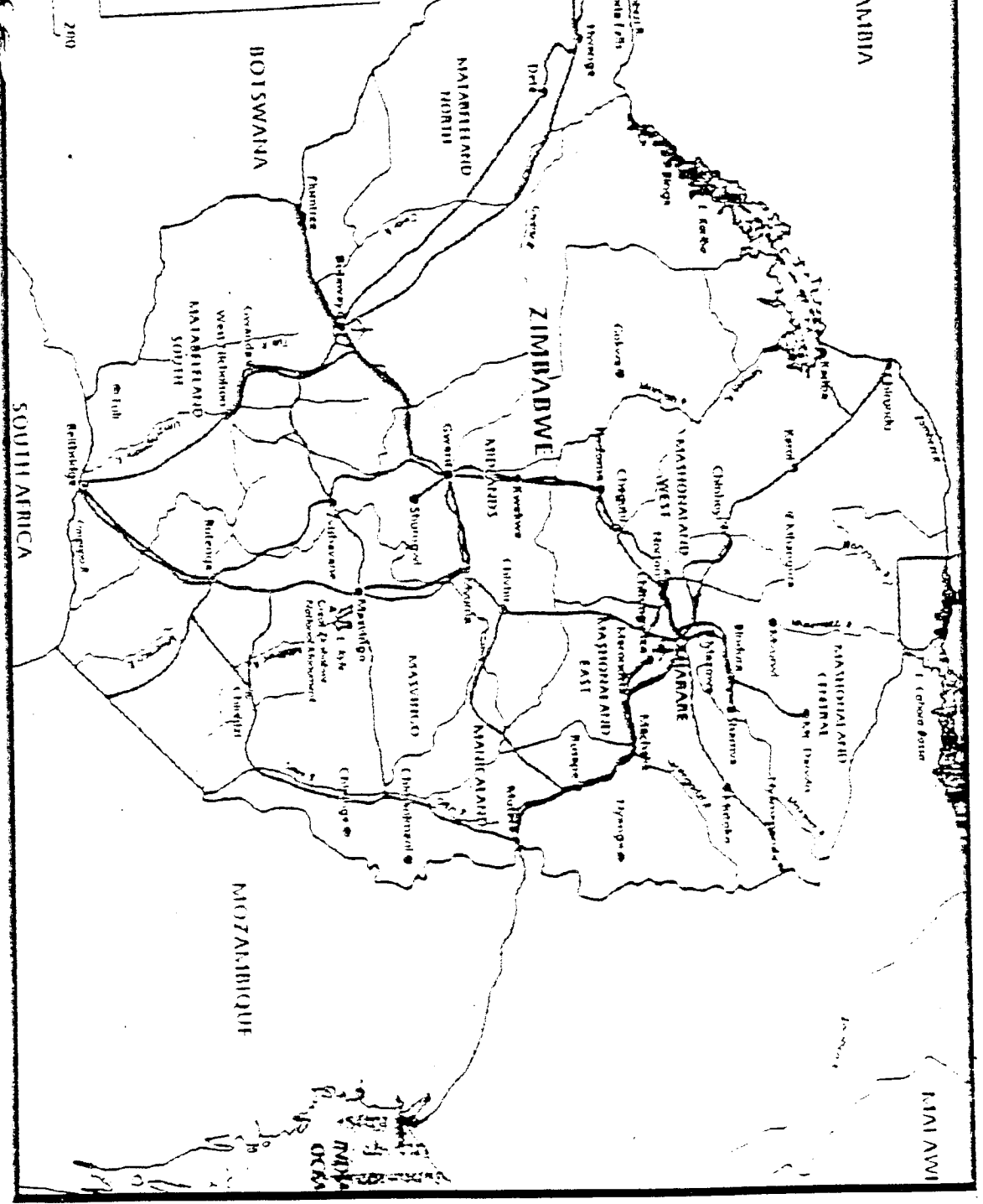
³ The lawsuit was filed under the WTO General Agreement on Trade and Tariffs, Article 27. A pharmaceutical company and the United States Trade and Patents Office (USTPO) contended that citizens made and distributed (more cheaply) the pharmaceutical company's patented HIV/AIDS drug. This case illustrates the bias inherent in patent rights: generic copies and reproductions of HIV/AIDS synthetic drugs

inequities in both intellectual property protections as well as national health concerns. The argument was that intellectual property rights support transnational pharmaceutical companies at the expense of local African communities to whom the companies have no responsibility (Weissman 1999).⁴

Subsequently, a sense of urgency has fueled efforts by members of the African Union (AU) to gain protection for plant genetic and cultural resources in legislation that could form a viable national alternative to the international intellectual property regime formulated by the WTO, the domestic policies of the industrial countries, and the World Intellectual Property Organization (WIPO). Zimbabwe is therefore found among several developing countries that are drafting National Sui Generis Policy to encapsulate a “unique” and ‘of its own kind’ of legislative alternative. L.T. Chitsike (2001) with the International World Conservation Union (IUCN) and the Food and Agricultural Organization (FAO), drafted the document, *Intellectual Property Rights and Genetic Resources: Guidelines for Developing Sui Generis National Policies and Legislation to Promote Community and Farmers’ Interests for Southern Africa* (2001). While Chitsike’s document drafted only guidelines that might underpin the Sui Generis it is expected that the final formulation of the National Sui Generis Legislation will be completed in consultation with local participants. Whether the Zimbabwean State has the will or the capacity to complete this consultation or not, fieldwork examining the practices of local TMK participants with this knowledge becomes even more urgent.

violate IPR law, but the use of derivative information from the custodians of TMK rarely achieves the same redress. See Dawkins (1999) for further details.

⁴ Pharmaceutical companies identify biochemical elements of plants and the desired physiological effects presumably without accessing traditional knowledge of the medicinal utility of plants. It is more likely, however, that they worked with ethnobotanists who worked with traditional peoples. See the work of Van Wyk, Outdshorn and Gericke (1997) as an example of how traditional medicinal knowledge is appropriated for literary efforts and published for others’ benefit.



Methodology

I conducted fieldwork on traditional medicinal knowledge in Zimbabwe from June 19 to September 7, 2001. I had lived in Zimbabwe four years before, for eight months, while studying with a Syracuse University program of professors specializing in cross-cultural psychology, political science, anthropology, Shona language, African feminism and environmental studies from the University of Zimbabwe. During that time I familiarized myself with the local language, Shona, and the major cultural, political, social and economic issues of the country. Simultaneously, I gained local contacts through an internship with the United States Agency for International Development (USAID).

Due to political and economic instability in the country during my stay in 2001, I based myself in the capital of Harare, less subject to violence over agrarian reform. I stayed with a young urban Zimbabwean couple related to my friend Grace Dzenga who was a staff member of the Syracuse University program. Their trust and friendship ushered me into their larger spheres of family, friends and neighbors. In the capital I was introduced to resources including:

(1) Academic literature written by: Anthropologists Pam Reynolds (1991, 1995); Michael Gelfand (1962, 1968, 1988); Michael Bourdillon (1976); Victor Turner (1954, 1964, 1970) and Edith Turner (1992) and sociologist Gordon Chavanduka (1979, 1997).

(2) Relevant Shona poetry, songs, novels and writings on the traditions of “the golden and old days of Zimbabwe”, *Pasichigare*, when medicinal plants were widely used;

(3) Newspaper accounts of the controversy over recognizing traditional healers obtained from the state paper, the *Zimbabwe Herald*, and the independent papers of the *The Daily Mail* and *The Independent*;

(4) Transcripts of past interviews with healers, mediums and traditional authorities in the National Archives of Zimbabwe. I obtained an interview with President Macheka commenting on the formation of the first traditional healers association, the National *Varapi* Association. This account told of the types of healers and practices that the young organization was conflicted over including or excluding in their organization. Among these topics were whether or not traditional medicinal plants should be sold to the colonial government, the British Crown, American scientists (1950s) and/or the general populace in the town markets.

(5) Gordon Chavanduka, the President of ZINATHA, other traditional healers and merchants who sell traditional medicinal plants in the metropolis, as well as the academics, policy-makers and lobby groups who are approaching the protection of cultural, intellectual and plant genetic resources and rights from an applied perspective.

Despite the media reports of political violence, news and embassy reports identified which rural areas were safe to visit. Therefore, I began my study in Guruve and

Chaminikire Village, six hours north of Harare. I spent two consecutive weekends here conducting interviews of healers and traditional authorities. I spent the subsequent two weeks in the villages and towns in the Eastern Highlands, located ten hours East of Harare. I traveled to the towns of Chimanimani and Chipinge before conducting interviews in the surrounding rural areas. Chipinge is renowned as a gathering site for powerful healers, many of whom travel to both South Africa and Mozambique in order to add to their healing repertoires. My research assistant provided access to the surrounding rural areas through his relatives living in Nyamasundu Valley, Chirinda Valley, Mount Selinda and Tilbury Estates. His assistance and recommendations aided my in-depth interviews, follow-up interviews and participation-observation.

I subsequently moved both West and North to Binga and Lake Kariba in an area where the Zambezi River widens to become the Zambezi Escarpment. This area possesses unique flora and fauna found primarily in the wetlands, *vleis* and *danbos*. Primarily Tonga speaking people still inhabit this area, however, many of the individuals I interviewed spoke four languages fluently, including English, Shona, Ndebele, Tonga and often Nanja also. This area had also been called the “jackpot” of healing traditions in Zimbabwe. I stayed here for one-and-half weeks before heading to Plumtree on the border with Botswana for several interviews. Lastly, I accompanied two assistants of one traditional healer to the high *veld* outside Concession in Mashonaland Central, three hours North of Harare. This was to interview, observe and understand the traditions surrounding the collection of the medicinal plants.

I chose to visit this range of sites after beginning in the cosmopolitan capital of Harare. In Harare, the healing traditions flow in from all the surrounding areas.

Therefore, I thought that it was less important to stick to one ethnic group's healing practices since I had already begun to be exposed to the cosmopolitan mixture of Bantu traditions in Harare. Consequently, I found there could be a value in obtaining a picture of the overall range as well as the commonalities between the different healing traditions in the country. I think this approach is especially important because it reflects the contemporary phenomena of creolization, dislocation and cosmopolitan movements that contribute to a *mélange* of tradition that is still informed by the common Bantu heritage.

My use of the services of a translator allowed my informants to speak in their mother tongue, Shona, Tonga or Ndebele. In doing so, I used significant Shona terms (seen in the text) interspersed with my English to encourage rapport with Shona-speaking informants.⁵ Of the formal interviews, I conducted:

- (a) One with a spirit-medium, *svikiro*;
- (b) Four with members of the local government and traditional authority structures - one sub-chief, *sadunhu*, two headmen, *sabukus*, and one rural district councilor;
- (c) Seven with healers' assistants, *makumbis*;
- (d) Twelve with patients/consultants of different healing traditions;
- (e) Twelve with traditional healers, *n'angas*;
- (f) One not yet consecrated traditional healer, *n'anga*;
- (g) Three with individuals who called themselves 'doctors' or 'herbalists' in the newer terms, "*chirembas*" or "*chitopotas*";

⁵ Since these Shona terms provided for me a vital linguistic portal into the traditional medicinal knowledge system I have kept them in my text in order to emphasize their significance.

- (h) Five with plant, *muti*, merchants;
- (i) Two with officials of ZINATHA- the trade union of Zimbabwe Traditional Healers;
- (j) One with a pharmacy student;
- (k) Six with the relatives of traditional healers, *n'angas*.

Confirmation of my material sometimes came from conversations with informal sources. A portion of my data was obtained from helpful acquaintances who had wanted to contribute to my understanding of their own families' *n'angas* by collecting interviews for me.⁶ With each of my informants I first gave a description of myself as a student-anthropologist who studies human relationships and culture. I explained verbally to each informant the ethical requirements of my research as outlined by the research protocol and accepted in my research consent form.⁷ For security of their association with me, each informant was given a copy of a letter from Dr. Emmanuel Chiwome, a professor at the University of Zimbabwe who supervised my project with the understanding that: (1) I was not aligned with any of the major political parties; (2) I was not involved in research around the contentious land reform issue; and (3) my aim was to talk to traditional and cultural authorities and persons about traditional medicinal knowledge circulation. All participants gave either written signatures or verbal consent to be both included in this

⁶ Although I did not rely on this material since I had not collected it first hand and had not subjected it to ethics or other restrictions I viewed it as second-hand confirmation of my own material.

⁷ The research consent form is a form submitted to the Research with Human Subjects Ethics Board. Mine was approved and documentation of this is provided in the appendices.

research and have their names printed in this text. The participant-observation I engaged in was as an observer of patient/consultants visiting *n'angas* for healing and strengthening medicines, ritual cleansing and rituals for thanking and invoking the ancestors in order to re-establish one's health and spiritual well-being.

Outline of chapters

The first chapter of this thesis presents the critical differences and relationships between plant genetic, cultural and intellectual resources before addressing the way they have been collapsed together under legislative frameworks. The current merger of international, national and local legislation in Zimbabwe's National Sui Generis Legislation will be shown to be lacking specific representations of the authentic and prior local practices reproducing traditional medicinal knowledge. The consecutive chapter contains the results of fieldwork I conducted on the customary practices, rituals and symbols that socially renew the traditional medicinal knowledge system in Zimbabwe even today. It is shown that this system is comprised of individual authorities responsible for keeping the core traditional medicinal knowledge secrets and benefiting a larger field of social actors with symbols, rituals and services. In the chapter following this, the traditional medicinal knowledge system is revealed to benefit even Zimbabweans who engage in non-customary practices of marketing or charging for traditional medicinal products detached from rituals and symbols. Those whom I will call 'agents of separation' appropriate derivatives of traditional medicinal knowledge in non-customary ways that can both draw upon and diminish tradition. The last chapter considers the results of these findings to argue for entitlements to customary and non-customary practices in Zimbabwe's National Sui Generis Legislation. Both sets of customary and

non-customary divergent interests could be supported in such an arrangement that will variously recognize and protect local TMK practitioners with a cultural right to reproduce and continue TMK practices.

CHAPTER ONE: Cultural, plant genetic and intellectual resource rights and frameworks

Rights in and the protection of plant genetic and intellectual resources have preoccupied the agendas of intergovernmental agencies to the extent that cultural resources have become entangled in them without full understanding of their role or significance.⁸ To date, cultural resources have only gained partial international recognition now as they have pertained to “common heritage” plant genetic resources. I will outline these legislative mergers of international, national and corporate interests in each of these resources as they have provided the contextual basis for the National Sui Generis Legislation and therefore also both my fieldwork and analysis that the local and customary practices of traditional medicinal knowledge need special protection. Prior to this, however, it is critical to untangle the role of cultural resources, such as traditional medicinal knowledge, from the other resources and distinguish its practical intermediary role between them. This begins as follows with an incipient definition of biological and plant genetic resources linked to cultural resources.

Biological and plant genetic resources

Local knowledge, in practice, helps identify the healing and medicinal properties of biologically diverse genetic resources while developing applications and relationships with them. Indeed, the intimacy of local relationships with the greater natural environment can yield sophisticated ecological, medicinal, agricultural and veterinary

⁸ Or more likely, because cultural resources are related to plant genetic resources and intellectual resources plans for them are collapsed into the plans for the others. The World Intellectual Property Organization (WIPO) (2001: 20) in particular notes that its terminology and conception of traditional knowledge is not adequate even as it is responsible for harmonizing legislation that pertains to all three types of resources.

knowledge (Johnson 1992; Plotkin 1993; Reichell-Dolmatoff 1976; Rappaport 1967). Further, while local knowledge of the environment is not expressed in chemical, genetic or standard Linnaean taxonomic terms, the resulting accumulation of local referents to the utility of biological resources shows that they are extremely valuable.⁹ Since development plans and legislations are primarily concerned with accessing, conserving or exploiting only the biological resources themselves for their utility, on-site, *in situ*, or *ex situ*¹⁰, however, the role of local knowledge, as a cultural resource, has often been reduced to its biological referent ability.

The cultural resource

It has been academically established that the local knowledge of indigenous peoples has inherent inalienable value as a cultural heritage and resource (Leach and Mearns 1996; Reichell-Dolmatoff 1976; Weiner 1992). Nonetheless, academics, policy-makers and even indigenous, local, traditional and native persons themselves have lacked a consensus on how to define this knowledge and therefore how to ascribe it value. Is it traditional, indigenous or local knowledge? While there is no obviously 'correct' terminology, most prior references distinguish generally the knowledge of native, indigenous, aboriginal, pastoral, local and traditional peoples from the knowledge of the modern industrial countries that arises from the empirical logic of technoscience (Haraway 1997). However, Argawal (2000) convincingly resists this diametric

⁹ The value is well established by ethnobotanists, such as Plotkin (1993), as well as the profit of pharmaceutical companies. See Mooney (1997) for statistics about the various pharmaceutical profits based on the derivatives of traditional knowledge in developing countries.

¹⁰ *Ex situ* is the utilization of a biological product out of its natural region or environment.

opposition. In his view, this vision (forwarded by Strauss 1962, 1966 and cited in Argawal 2000) must be overcome via a lens that sees that:

Indigenous knowledge is closed, non-systematic, holistic rather than analytical, without an overall conceptual framework, and advances on the basis of new experiences, not on the basis of a deductive logic.

Argawal (2000: 11) implies that indigenous knowledge is a non-transferable territorial knowledge that evolves in relation to the local milieu. If this is the case is there really a “common” traditional knowledge? To some, the commonality is “tradition” which connotes a primitive knowledge belonging to the past, rather than to the present. In this paper, however, I support the word “traditional” following the distinction made by Berkes (1999: 5) because it refines an ‘indigenous local knowledge’ to plural and particularistic manifestations. He argues:

I prefer to use the term 'IK' (indigenous knowledge) more broadly as the local knowledge held by indigenous peoples, or local knowledge unique to a given culture or society. Of course, much of the IK (indigenous knowledge) literature is not about ecological relationships but about many other fields of ethnoscience including agriculture, ethnobiology, and ethnomedicine. Some of these other areas of ethnoscience -- for example, ancient erosion control techniques and water conservation --are directly related to ecological knowledge, but others (e.g., ethnoastronomy) less so. For these reasons, I limit the use of 'TEK' (traditional ecological knowledge) to explicitly ecological knowledge, and consider it a subset of IK.

By this reasoning traditional medicinal knowledge is a subset of indigenous knowledge. But then, it is also a medicinal knowledge informed by particular territorial

traditions.¹¹ Further, it is evident in numerous anthropologists' ethnographies that entire social and symbolic systems and resources emerge from tradition and traditional knowledge (Appadurai 1990; Bourdillon 1976; Gelfand 1962; Reynolds 1996; Strathern 1996). A common observation to the traditional knowledge these anthropologists document is that it has socially integrating effects when enacted through ritual and the reproduction of tradition (Mauss 1954; Turner 1970). Furthermore, cultural resources are locally treasured, "inalienable possessions" that may build identity, status and authority for local families and individuals who receive reward by social (symbolic) capital (Bourdieu 1977; Weiner 1992). Thus, we are able to conceive of cultural resources, such as traditional knowledge, as practices and behaviors that activate and reproduce social systems rooted in territory and tradition. As we will see, intellectual resources, on the other hand, are abstracted products that simulate (copy) in a separate context, the experiences and practices evolved amidst a particular territory and tradition.

Intellectual resources

Information that 'tells' the utility of a biological resource is extracted not from a biological resource, but from local agents who practice traditional knowledge of it. The isolated information about biological properties is therefore appropriated, as a derivative, from traditional knowledge.¹² This isolation of a derivative, that is abstracted and

¹¹ Although "indigenous peoples" have been lumped together as categorically different from the modern western society, the traditions of each should be recognized as distinct. In support of this approach, the Indigenous Persons Earth Charter writes, "tradition cannot be separated from science. For a copy of the *Indigenous Persons Earth Charter*, see the appendices of Posey and Dutfield (1996).

¹² Legislative definitions create categories that may either obscure differences or create them. For instance, a 'derivative' in development discourses is defined as a product extracted or developed from a biological resource. While a biological resource is self-replicating, when it is empirically reduced to its chemical components, the abstracted information becomes a product that may receive an intellectual property right or patent restricting its use. I posit, however, that the importance of cultural resources, such as traditional

transported from a ‘mundane’ context calls testament to the high value placed on products in the ‘private’ domain of resources opposed to resources in the ‘public’ domain. It is critical to note this because as cultural resources are believed to be a “common heritage” and part of the public domain, they have been valued less than intellectual resources. This distinction is drawn by the history of Western Science that establishes “truth” in private settings e.g. laboratories first, before the product is ‘unveiled’ to the public (Haraway 1997). The “truth” of a cultural resource, however, is not established even if it may be restricted by territory because the ‘unveiling’ of a cultural resource typically remains in ritual on-site productions, opposed to highly circulated transnational products. On the other hand, the intellectual resources compiled through the application of high information technologies e.g. in the fields of bioinformatics, genomics and biotechnology, are located in private academic communities, research institutes or corporations become products that may be found variously throughout the world.¹³ A ‘technological treadmill’ thus manufactures the value of intellectual resources, the most “novel” being the most restricted and therefore the most valuable. This phenomenon observed in the Information Economy props Cheater’s (2000: 18) observation that the difference between cultural resources and intellectual resources parallel the distinction between ‘information’ and ‘knowledge’:

If ever it was ‘knowledge’, is no longer synonymous with ‘information’. “To know” requires no object: etymologically knowledge is essentially personalized, as sensory or mental constructs. In contrast,

medicinal knowledge, are obscured and overlooked in the use of this categorical definition. The discourse and texts of the World Intellectual Property Organization (WIPO) and the United Nations Convention on Biological Diversity (CBD) both reveal important gaps in attention and comprehension of the role cultural resources like traditional knowledge play in conjunction with both biodiversity and intellectual resources.

¹³ Another bias stems from the delineation of what is ‘utility’ and therefore considered commercially applicable. The utility of biological resource products identified by traditional knowledge, for instance, could be synonymous with commercial or industrial applicability, yet this is still dependent on whether or not technological labor has extracted, miniaturized and reproduced the final product. See Haraway (1997).

'to inform' must take an object to make sense. Logically, then, though it is rarely made explicit, 'knowledge' can be individualized and by English definition is impossible to transmit, as many teachers attest! 'Information,' on the other hand, requires sharing. But since 1937, in the context of 'information science', 'information' has been dehumanized, being that which is... separated from or without the implications of reference to, a person informed: that which inheres in one or two or more sequences, arrangements, etc., that produce different responses in something and which is capable of being stored in, transferred by and communicated to inanimate things.

Intellectual resources are, therefore, abstract, derived symbolic products (information) that may be appropriated and transported e.g. digital code, databases, diskettes, media or written documents called “simulacra” (Baudrillard 1981). A cultural resource (such as traditional knowledge) on the other hand, is a territorial, symbolic possession embedded in ‘personal’ knowledge and behavior that is enacted, performed or demonstrated. Cosmopolitan and transnational flows of persons, services and information products leave the impression that *in situ* cultural resources are the natural common heritage of all humans and can therefore be dismissed as ‘raw’ unsophisticated resources.¹⁴ The international discourse and frameworks that neglect to represent the sophisticated cultural systems and individual agency involved in maintaining, developing and protecting cultural resources contribute to this misidentification and devaluation. Because of this neglected distinction, I have chosen to use the term ‘derivative’ for the remainder of this thesis: to refer to those abstract intellectual resources extracted from territorial cultural resources. This definition further supports the aim of this thesis in emphasizing the customary and territorial importance of cultural resources and to

¹⁴ A negative value is often attributed to ‘inherent’ resources and abilities opposed to ‘transcendental’ resources. See Mellor (2000). Yet, cultural resources also, particularly in an age of technologically-simulated realities (the ‘simulacrum’) – are subordinated to the realm of unreality. See Baudrillard (1981) and Durkheim (1961).

persuade that there is a need to formulate a unique system of protection for the cultural practices that have been collapsed between plant genetic and intellectual resources. While cultural practices represent a practice that mediates also between these two former resources, the following section outlines the current international legislation, pertaining to all three resources. It further raises the motivation for Zimbabwe to create its own National Sui Generis Legislation to uniquely protect elements of its biological and cultural patrimony.

International frameworks

Of the three resources I address in this chapter, intellectual resources were the first to gain an international system of protection. Rights to benefit from, restrict use of and access to an individual's "commercially applicable" and "novel" intellectual resources were first recognized at the Paris Convention for the Protection of Industrial Property (1883). The industrial countries that established the Convention believed that the intellectual property rights (IPR) granting legal individuals title to his or her innovations would promote development. Thus, during the development era, following World War II, the World Intellectual Property Organization (WIPO) was created to extend this mandate to the developing countries as well.

However, in 1986 the World Trade Organization (WTO)¹⁵ drastically expanded the scope of intellectual products that could be considered "human creations" to include products fabricated from biological and plant genetic resources. Because the

¹⁵ The WTO facilitates the largest international free-trade agreement, the General Agreement on Trade and Tariffs, otherwise known as the GATT. The GATT, signed by nearly all the industrial and non-industrial countries of the world including China, has been called the "new constitution" of global community by the previous president, Renato Ruggiero. Under the WTO, the "non-trade" tariff barriers to free enterprise are disputed at the WTO tribunal in Geneva.

development of biotechnology and pharmaceutical industries was be favored, Article 27.39(b), Trade-Related Intellectual Property Rights (TRIPS) was written into the General Agreement on Trade and Tariffs to lower barriers to a free enterprise in plant varieties, including the synthetic versions of biological processes, products and resources (Cullet 2001).¹⁶ Yet, this new article, presuming an “open access” regime to biological products that could be intellectually conceived of (as intellectual resources), raised abundant opposition.¹⁷ Several developing countries, members of the WTO and rich in biodiversity, strongly opposed the TRIPS article not only because it has meant that they essentially would have to let go of their sovereignty as protectorates of local communities and regional, *in situ*, biodiversity and plant genetic resources, but that they also would be demoted to ‘colony’ status because they lacked the technological capacity to synthesize “novel” industrial biological products.¹⁸ The potential loss of total sovereignty over plant genetic and cultural resources in the name of international mercantilism, in fact, forged several unlikely alliances between developing countries, indigenous rights groups, and international environmental organizations. Nonetheless, the United States has continued to hold developing countries accountable to this article

¹⁶ Ninety percent of biotechnology companies are from the G-7 countries, and one-third of patents for biotechnology products belong to the United States. (Speech by Rodney Squire of Storsa Biomedic. Global Governance Conference, Montreal, October 15, 2002.)

¹⁷ Some biologists, for instance, deny the validity of granting an IPR for synthesized biological products because this presumes they are “novel” creations. Ho (1998) argued that the mimicry of biological self-replicating and reproducing processes is not an innovation. She and others concluded that the products of biotechnology are only able to gain patents because they 1) identify the utility, or active ingredients, of biological resources; 2) abstract and translate this information into chemical properties; 3) mimic the chemical relationships to create a synthetic product; 4) standardize these products for mass reproduction; and then 5) package the product for sale (Ho 1998; Plotkin 1998). To date, it remains contentious as to whether any individual should be able to gain an IPR over biological resources that are already self-replicating. This argument can also be applied to cultural resources that are socially self-replicating.

¹⁸ The information derived from its incorporated state will from here on be referred to as a “derivative”. While it is the information about a biological resource that is often appropriated, this appropriation has been misnamed as “biopiracy”. See Khor (2000).

by threatening sanctions¹⁹ under the WTO tribunal. This pressure has forced developing countries either to embrace the international IPR regime under TRIPS or accept a loophole, stipulating that: “member states shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof” (Cullet 2001: 1).

National Sui Generis Legislation

It is not surprising then that the option to create unique, *sui generis*, legislation to protect their biological, cultural and intellectual resources has been embraced by several developing countries including the Philippines, Brazil, India, Thailand and member nations of the African Union (AU). Especially since the IPR law in the WTO/TRIPS trade article is perceived to contradict the developing countries’ regional interests in developing or benefiting from their cultural and biological resources, *in situ*, in ways that preclude foreign industrial applications, several of these countries have drafted and accepted National Sui Generis Legislation. The AU, for instance, has signed into Model Law, *African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources* (2001).

This document outlines the plans the AU members have for arranging a paradigmatically different approach to resource protection than that formulated under intellectual property rights law. In Part IV of the Model Law, member states recognize local communities first ‘a priori’ rights with regard to: i) their biological resources; ii) the right to collectively benefit from the use of their biological resources; iii) their

¹⁹ The US Trademark and Patents Office is particularly vociferous in charging developing countries with violations of the World Trade Organization’s TRIPS article. See Weissman (1999).

innovations, practices, knowledge and technology acquired through the generations; iv) the right to collectively benefit from the utilization of their innovations, practices, knowledge and technologies; v) the right to use their innovations, practices, knowledge and technologies in the conservation and sustainable use of biological diversity; vi) the exercise of collective rights as legitimate custodians and users of their biological resources (AU 2001: 9). The AU Model Law poses the most deviation from other protective regimes in its declaration that it will protect the salient practices in addition to targeted resources as products. This is reasoned in the Model Law as such:

The rights of local communities over their biological resources, knowledge and technologies that represent the very nature of the livelihood systems they have evolved over generations of human history, are of a collective nature and, therefore, are **a priori** rights which thus take precedence over rights based on private interests. (African Union 2001: 1, emphasis mine).

And they argue that this is because,

It is necessary to protect and encourage cultural diversity, giving due value to the knowledge, technologies, innovations and *practices* of local communities with respect to conservation, management and practices of local communities. And, there is the need to promote and support traditional and indigenous technologies for the conservation and sustainable use of biological resources and to complement them by appropriately developed modern technologies. (African Union 2001: 1)

As an AU member nation, Zimbabwe is also drafting its own National Sui Generis Policy. It is entitled: *Intellectual Property Rights and Genetic Resources: Guidelines for Developing Sui Generis National Policies and Legislation to Promote*

Community and Farmers' Interests for Southern Africa (2001). However, while Zimbabwe attempts to firmly establish its national jurisdiction over its biological and cultural diversity they continue to be called part of a global “commons” (WIPO 2001) or the “universal heritage of mankind” (Cullet 2001, citing the Food and Agricultural Organization).²⁰ Further, while Zimbabwe’s Sui Generis Guidelines are drawn from the AU Model Law, it is still highly influenced by international conceptions that may or may not assist Zimbabwe in establishing specifically how cultural resources like traditional knowledge can be protected as an ‘a priori’ practice (stated in the AU Model Law). This is illustrated specifically by Zimbabwe’s unique embrace in its Sui Generis Legislation of ‘traditional resource rights’ combining a “bundle” of rights from such arenas as the international intellectual property rights regime and international human rights covenants. While ‘traditional resource rights’ will be addressed more thoroughly in a coming section, I will now explore the various prior frameworks pertaining to intellectual and plant genetic resources and query whether they may or may not help fulfill the stated alternative agenda of the AU member states - to uniquely protect ‘in situ’ local practices. We shall see as follows.

Cultural rights

Protections for cultural resources have one or two precedents in international human rights law.²¹ The most promising among these is in the International Covenant on

²⁰ This mandate, fueled by the trade interests of the biotechnology and pharmaceutical companies, could still challenge Zimbabwe’s ability to establish its jurisdiction as protectorate of these practices, *in situ*, in the Sui Generis framework.

²¹ During the November 2000 meeting of the World Trade Organization, the African Union (AU) and Third World Network resisted the TRIPS Article, while gaining varied support from Brazil, the Philippines, Thailand and India, as well as various environmental and indigenous rights groups like Diverse Women for

Economic, Social and Cultural Rights (1966). The Covenant asserts that the 131 states party to it must recognize a local right to development that is non-dependant upon this states other international or regional obligations:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

This becomes significant with regard to Article 15 of Covenant that stipulates a cultural right:

To take part in cultural life; To enjoy the benefits of scientific progress and its applications'; To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. (emphasis mine).

As a legally binding document, the Covenant is perhaps the strongest alternative to the mandate of the biotechnology and pharmaceutical industries supported by the developed countries of the WTO. However, as the Covenant applies to state signatories,

Diversity, and an indigenous network in the Asia-Pacific region run by Victoria Tauli-Corpuz. See Khor (2000) for a review.

not to the constituents inside the state, the cultural rights it propounds are not in their nature as particularistic as even the AU and national legislation recognizing local communities 'a priori' right to various local practices. Still, the Covenant's 'right to development' fairly closely parallels the AU rights to 'a priori' practices.²² The American Anthropology Association (AAA 1998, as cited by Merry 2001: 46) also argues that the general conception of a cultural right should support self-directed development within the processes and practices that allow local communities,

To realize a capacity for culture to produce, reproduce and change the conditions and forms of their physical and social existence so long as such activities do not diminish the same capacities of others.

Hannerz (1997), Milton (1996) and Sen (1999) also suggest culturally reproductive practices, processes and 'capacity' are particularly salient in an age of a 'cosmopolitan globalization' that can tend to overshadow the particular rights, needs and interests of "territorial cultures". A central need to continuing gestation of territorial cultural resources is therefore a refined definition of a system of protections that can be both locally appropriate and meets the requirements of cultural rights. However, the preeminence of the industrial countries' protective legislation and frameworks may pose several assumptions that must be first acknowledged as inappropriate e.g. intellectual property rights.

²² The 1996 UN Covenant on Social, Economic and Cultural Rights is extended from the 1947 United Nations Declaration on Human Rights.

Intellectual property rights

Intellectual property rights are essentially cultural rights for industrial societies. In fact, the right to practice the development and generation of cultural resources is assumed in most countries of the world, but the right to abstract and isolate intellectual products for commercial application and profit is restricted to private individuals and institutions. This private right to profit from commercial derivatives of cultural resources²³, however, did not become crystallized until the 19th Century when the legal definitions of intellectual property and rights were promoted in Europe and the United States to stimulate competition, ‘innovation’ and industrial growth (Coombe 1998). As discussed previously, legal conceptions and definitions drew the line between private and public creations as well as individual and community fabrications in order to establish what was ‘novel’. Hence, whether or not many individuals contributed to the final product or not, only one “genius” individual or private corporation could gain credit for synthesis and expression vis-à-vis an intellectual property right (Merryman 1980). Therefore, in the Lockean tradition, the individual adding ‘new’ labor in isolating, combining, extending, rewording, modifying, transferring or synthesizing any intellectual, physical or cultural material gained the patent, copyright, trademark, industrial design, or trade secret (Posey and Dutfield 1996: 90). Herein lies the crux of the problem over protection with regard to cultural resources: because many have not been previously registered or protected as an IPR in an industrial country. Therefore, the transfer of derivatives of territorial cultural resources, ‘ex situ’, has them penetrating markets as “novel” products. Yet, these

²³ This debate has sometimes been represented as culture with a capital ‘C’ opposed to culture with a lower-case ‘c’.

derivatives are not “novel” to individuals in territories who already practice with them, ‘in situ’. This protection is often continued by these ‘territorial cultures’ in order to maintain collective social arrangements, which is not recognized fully as I comment on next.

Collective rights

Cultural resources can support the formation of a collective identity. However, the recognition of collective entities is limited to states and corporations. This situation, in addition to the fact that IPR is hinged on the ethic of ‘possessive individualism’, prevents local communities from gaining collective credit, protection or recognition for their collective cultural resources. Otherwise, the only other alternative that extends one’s personal identity is through individual rights (Handler 1985 cited in Coombe 1998; Macpherson 1962). Subsequently, if the State or a corporation does not receive credit for collective cultural resources, then the only other alternative is the promotion of individual monopolies over these resources. Coombe (1998: 226) notes the political obstacles thereby facing local and traditional communities who seek to stake joint and collective rather than individual claims to sovereignty or resources:

Denying the social conditions and cultural influences that shape the author’s expressive creativity, we invest him with powers of expropriation and censorship in the name of property. Representing cultures in the image of the undivided possessive individual, we obscure people’s historical agency and transformations, their internal differences, the productivity of intercultural contact, and the ability of peoples to culturally express their position in a wider world.

Clearly the milieu, the relationships, the processes, the derivatives, the traditions the collectives or the ‘systems of signification’ are overlooked when individuals gain reward for an isolated product of joint efforts. Individual rights are therefore exclusive rights that can slice through the collective, cross-fertilizing processes that gestate cultural and intellectual resources. While the AU Model Law may seek redress for this concern, the so-called ‘community rights’ of local communities still cannot possess equal weight to the individual rights or the rights legally recognized collectives. This is because any ‘community rights’ granted by the State Sui Generis Legislation can, *de facto*, only gain (*usufruct*) rights for communities to use plant genetic and cultural resources. The Model Law stipulates that community members may only restrict the circulation of their resources if it is “detrimental to the integrity of their (the local communities) natural or cultural heritage” (African Union 2001: 10)²⁴ and it is therefore highly unlikely, with the State managing the circulation, that it will see itself as “detrimental” and thereby restricted from access. Hence, the AU Model Law would collapse the collective rights of local communities and individuals into the State’s own jurisdiction, and subsequently consolidate national identity, sovereignty and patrimony at the expense of the local communities’. Collective rights therefore allow only a national or corporate stakeholder to profit over intellectual, cultural and plant genetic resources.²⁵ The ‘collective rights’ of local communities subsumed by the State then are transferred to possibilities of customary law.

²⁴ It is understandable that the AU member states assume jurisdiction over these collective or community rights because international law only recognizes two types of collective entities: transnational corporations and the states themselves.

²⁵ Zimbabwe’s National Sui Generis Legislation recognizes also a subset of community rights, called ‘community intellectual rights’. Yet, this formulation extends rights only to traditional professional groups who may function as legal entities similar to trade unions or corporations.

Customary law

Attempts to compensate for the gap in the strength and types of rights for local communities in Zimbabwe's National Sui Generis Legislation includes a deferral to customary law, norms and practices. As Zimbabwe has already established customary statutes in its Constitution, it is likely that these prior interpretations of local customs will continue to be heavily relied upon. Mamdani (1996), however, has raised a concern about the basis of all African customary law. His research established that many of the customary statutes present in African constitutional law today were only included if they served the interests of the previous colonial government. It remains therefore questionable whether customary law statutes, should be viewed as authentic representations of tradition-based communities, especially in a contemporary sense. An alternative to a sole reliance on these frozen statutes of customary law would include, a more direct participatory approach that may reveal customary or "jural norms" (Radcliffe-Brown 1964) composing the local ethics and guides have evolved with regard to the contemporary group and individual group practice, behavior and relationships. In the past, amongst the Shona, Holleman (1952) had found there had been customary practices and moral norms that provided traditional parameters to "good" or "bad" behavior.²⁶ Yet, it is not evident that these same customary practices and moral norms offer a genuine representation of local communities interests, practices and concerns over cultural resources like traditional medicinal knowledge today. It would be worth redressing this again if the 'a priori' practices of local communities are to be truly

²⁶ Holleman (1954) and Chavanduka (1979) document that these ethics have been upheld by the traditional council, *dare*, of elders, traditional healers, spirit-mediums and the chief and the chief's headmen.

protected as a cultural resource. This scenario draws our gaze back to how these ‘a priori’ practices can be made official without freezing only certain interests as has customary law statutes. While Zimbabwe’s National Sui Generis guidelines outline its own definition of a plan for traditional resource rights, the scope of practice or resources to be entitled  remains unclear.

Traditional resource rights

The most suggestive of any form of entitlements for customary and local communities for their cultural resources in all of the legislative documents are the ‘traditional resource rights.’ These are to be organized as a “bundle of rights” which supposes that individual, intellectual, cultural, community and property rights all must be available to traditional communities (Posey and Dutfield 1996). Zimbabwe’s Sui Generis Legislation stipulates that this means that the local communities have ‘traditional resource rights’ that give them (Chitsike 2001; 13):

- 1) The right to self-determination
- 2) The right to land
- 3) The right to indigenous knowledge
- 4) The right to participate in decision-making

Unfortunately, as I have outlined the prior forms of legislation pertaining to cultural resources the combination of the intellectual, cultural, community, customary and property rights is not an easy merger on the ground. For instance, if customary practice does not make cultural resources a “property”, then granting intellectual property

rights negates the customary cultural rights. Further, the ‘a priori’ right of self-determination cannot be realized unless local communities are not already subjugated to the State. Much ethnographic material has shown how this is a continuing concern for local communities especially when national development plans, as well as special, professional or private interests, conflict with their own interests (Ferguson 1990; Fairhead and Leach 1996; Gelles 1998; Lansing 1995). Appadurai (1990), for instance, argues that indigenous knowledge of local technologies (*techne*) could become obsolete if it is not continually practiced, enacted and reproduced. He asserts that the conditions for this includes forced cooperation with an alternative, applied knowledge such as that of a Western “expert” whose knowledge entails development schemes. Furthermore, anthropologists such as Kirsch (2001) and Merry (2001) have found that communities can prove “culture loss” and “damages” in courts of law when it is expressed in economic terms. From this vantage point it seems that entitlements to specific traditional practices provide the only refined and sensitive instruments that may be translated into a system of protection.

Direction of fieldwork

Because cultural resources such as traditional medicinal knowledge is not an immediately material intellectual or commercial resource it is critical to view them as practices needing rights to renewal. A cultural right to reproduce them hence would not entail an exclusive property right, but would offer entitlements to specific practices rooted in custom and generating cultural symbolic systems that benefit local social (not legal) collectives

It is apparent, therefore, that a comprehensive understanding of the prior customary ways in which traditional medicinal knowledge has been practiced and protected in local Zimbabwean communities is needed. My fieldwork undertakes this endeavor specifically by tracing how traditional medicinal knowledge is accessed, kept, used, shared and valued in ways that link and maintain an entire social system of traditions, rituals and relationships in Zimbabwe. However, colonialism, modernization and globalization have all impacted the unity of this system already. I analyze this through some of the various national urban and cosmopolitan interests that diverge from customary ways. It will be critical to look at these practices as well to assess and formulate various forms of entitlements to cultural practices in Zimbabwe's National Sui Generis Legislation.

CHAPTER TWO: Zimbabwe's Traditional Medicinal Knowledge System

Know where you came from: the ancestors of birds are in the nest. ~ A Shona Proverb

Centering the system

As we have seen, traditional medicinal knowledge is a cultural resource that is mostly regarded as the unclaimed “universal heritage of mankind”. Hence, with the exception of the African Union Model Law, the specific territorial and ‘a priori’ practices pertaining to traditional medicinal knowledge are not addressed in special legislations. However, as with scientific knowledge, ethnographic material shows that local communities definitely possess ‘a priori’ politics, relationships, practices and processes that either nurture or resist the use of traditional knowledge as a resource. For instance, Bourdieu (1993: 30) maintains that cultural resources are sown in a “field of cultural production”. The artifacts produced in these fields are dictated by a community’s ‘codes of consecration’ that provide guidance on the access and circulation of these cultural goods. These processes rely on implied “systems of signification” (Coombe 1998: 8), which actors utilize in negotiating and controlling access to these symbolic goods within the given cultural field. Therefore not everyone gains equal access to or benefits from these cultural resources.

Instead, symbolic capital (Bourdieu 1977) often accrues to individuals, families and groups that inherit cultural and symbolic resources.²⁷ This inheritance defines an inalienable, *a priori*, right for an individual, family or group to use, restrict use of, benefit from or share these resources (Weiner 1992). This is supported by findings that

²⁷ In the “good-faith economy” individuals, in family units, accumulate symbolic (cultural) capital and reputation via economic exchanges that demonstrate moral favoritism for immediate affines. See Bourdieu (1977).

demonstrate that such cultural goods often circulate within the lineages, fields, regions, or cultures where they may retain the highest symbolic value (Malinowski 1922; Mauss 1954; Weiner 1992). Like, symbolic capital, Weiner (Ibid: 63) theorizes that this circulation returns status, honor or dignity to individuals in a particular field through a special “keeping-while-giving” strategy. The cultural goods are thus guarded until sharing becomes necessary to renew both their symbolic valences for the larger community as well as the authority of those who have kept them.

In Zimbabwe, the traditional medicinal knowledge (TMK) spoken of is best known for its biological healing properties. However, anthropologists Reynolds (1996), Gelfand (1962, 1966, 1988) and Chavanduka (1997) have explored traditional medicinal knowledge as a cultural resource necessary for various cosmological, ritual or social purposes in Zimbabwe as well. In my own research, many patient-consultants whom I accompanied while they were seeking healing did not care whether their cure was herbal, social or spiritual as long as it was, *kushanda*, an effective cure. Furthermore, the consecration of TMK use by a community is not based on whether or not a healer has herbal knowledge or another variety of TMK (Chavanduka 1997). Rather, Gelfand (1962) demonstrated that Shona communities confirm and consecrate individual healers who prove they have a spiritual patronage. He explains that the process of proving one has a spirit begins when an individual cannot be cured of an illness. It is believed the individual is not cured because a spirit, a *shave*, has possessed them and wishes to be recognized first. To recognize the spirit, entails a family ceremony establishing a special distinction for the individual as someone on whom the *shave* wishes to bestow certain knowledge (ibid: 65).

When a spirit (shave) selects a person as its medium the future host falls ill, but he fails to respond to ordinary measures and a n'anga is consulted...A Mutambo ceremony is held outside the hut if the person improves for that particular spirit (shave). Others with similar spirit (shave) are invited and the songs and drums for that shave are invited. Months later, relatives and friend attend a ceremony where the medium is possessed by the shave for the first time.

The selection of spirit-possessed healers is an example of a 'code of consecration' that ensures that the majority of those who use TMK do so through spirit possession. Therefore, Chavanduka (1997: 27) documents that even though an urban populace may first seek medicinal herbs as a cure, healers who know only herbal remedies do not have the same elite status among family and community members as those healers whom the community has consecrated due to their spiritual patronage. This firmly routes the TMK system around those who practice it with spiritual symbolism and ritual.

On the other hand, Reynolds' (1996) work with traditional healers proposes two additional findings regarding the circulation of the TMK system. In exploring the common healer-apprentice, *n'anga-makumbi*, relationship between an elder affine and a child, Reynolds demonstrates that while traditional medicinal knowledge is accessed through dreams, one is only capable of receiving these dreams if he or she belongs to a family lineage that venerates its ancestral spirits. This practice will later be shown to have important implications when I examine why it is that TMK is used only by individuals who meet certain 'criterion of authenticity' (ibid: 11), as a code of consecration surrounding the use of TMK. Reynolds also established that traditional healer's enactment of TMK primary secrets normally only occurs in crisis situations. It is as if the strategy of 'keeping-while-giving' treasures documented in Melanesia could also apply to

the power of specific Zimbabwean herbal medicines that are kept in rare circulation (Weiner 1992).

These practices do not follow strict market logic however and subsequently change is occurring in Zimbabwe as Bourdillon's (1976) work demonstrates. Nonetheless, no anthropological contribution to date clearly redresses the evidence of continuity and change in TMK practices in light of the new potential IPR or legislative conscriptions. Indeed, no model plainly explicates how TMK circulates, 'a priori' to the State legislation. Such a model should be prerequisite to forming any new protocols of protection in Zimbabwe's National Sui Generis Framework. This is especially as the current bridge between general Constitutional law and customary law is not complete (Mamdani 1996). Even Holleman (1952: 34) for example, has found customary practices that could be salient to the protection of TMK today, but we may not be sure because they are not included in the Constitutional Law. Amongst the Shona, he found that some objects such as cattle or the spirit-medium accessories have a "reproductive value" that calls for individual ownership. This, while items used for direct services and consumption such as food, tools or shoes are shared collectively. Such a separation of 'spheres of exchange' is typical with African prestige items, as Piot (2000) clearly reveals. Yet, traditional medicinal knowledge is called internationally the "heritage of mankind" and/or a "community resource". The coming section will contradict this conception and we will see that traditional medicinal knowledge is intimately attached to practice, first, and the overall spiritual and social values of the community, second. I will present the basic symbolic meanings of TMK before revealing the most salient practices in an outline of how it is accessed, kept, used, shared and valued.

Local terms of traditional medicinal knowledge

Language is a community possession that individuals subsequently expand upon or manipulate in creative ways (Leach 1976). The most profound and complex sign may have its meaning altered when it is circulated widely in cosmopolitan settings. For example, communities in Zimbabwe and South Africa use the term “*muti*”, a tree or tree medicine, to refer to the plant substances used in traditional medicinal knowledge and sold in street markets in the metropolis.²⁸ As a result of the wide circulation of this term by merchants throughout sub-Saharan Africa, *muti* is now a mundane and derived term applied to any healing substance, including non-plant mineral or animal substances. Yet, a more specific and profound term used to refer to some of these substances is “*mishonga*” (plural). This is a Shona term applied specifically to TMK substances that are also deemed to be “magical”.²⁹ To say “*Mishonga ChiShona*” also asserts that these magic/medicines belong firstly to the Shona.

Further identifying the sites of TMK is the term, “*hun’anga*”, which refers to TMK techniques incorporated into the practices of the *n’anga*. This term refers to all of the practices associated with *n’angas*’ efforts in divining, healing, working with natural sources, performing rituals, analyzing illnesses, and meeting community expectations. Also associated with this term but identifying TMK still further within the core of its repertoire, “*mapipi*” refers to the intuitive logic behind traditional medicinal knowledge

²⁸ Definition taken from Dale (1981).

²⁹ Although none of the previous literature reviewed addresses the Shona term “*mishonga*”, it was evident from my informants that they used this term to mean both medicine and magic. A Professor of African and Shona Folklore Emmanuel Chiwome, from the University of Zimbabwe, confirmed my observations (personal communication, July 2001). However ‘*mishonga*’ is not commonly spoken of, especially in English, because it has associations with the “magic”, “superstition” of colonial and missionary persecution. Therefore this term cannot be found in Shona-to-English dictionaries including Dale (1981).

as a whole, which is different for every single traditional healer, the *n'anga*. *Mapipi* locates the accumulation of all of the experiences, practices, insights, rationales and confidence gained in lifetimes of dealing with TMK within individual *n'angas*, particularly the “*godorbori n'anga*” as we shall see.

Starting with this term, *mapipi*, then the symbolic resources of traditional medicinal knowledge is possessed within the core repertoire of an individual's memory and experience. Outside this central core resting in the *n'anga*, general TMK symbols are disseminated through traditional healers in his or her practices, *hun'anga*, build, create and renew a common cultural and symbolic field. While outlining this unified cultural field and symbolic system of identity, experience and understanding has been a common ethnographic endeavor, the following sections of this thesis contribute an outline of how contemporary individual healer's customary practices selectively determine circulation of TMK. Without the individual healer's knowledge and practice, *praxis*, however, the cultural resources do not activate, imbue or reproduce the overall TMK system, which benefits many (Bourdieu 1977). There, I will proceed to highlight how TMK is a cultural resource of practices - accessing, keeping, using, sharing and valuing TMK – that is responsible for a lively reproduction of customary relationships, values and rituals.

Accessing the ancestral gift

“My mudzimu show me the plants in my dreams.” - Interview with healer in Manjolo District, Zimbabwe.

“There is a part of African culture that is understood but also a part that no one can know unless you are a mudzimu (ancestor).” ~ Interview with a Zimbabwean Mbira (thumb piano) Player, Montréal, Québec.

The relationship of the individual to his or her family determines his or her access to traditional medicinal knowledge (Reynolds 1996). Elders, *sekuru* (male) and *ambuya* (female), who are *n'angas*, select assistants who appear humble and discrete from amongst their younger kin to be assistants and to learn TMK. In a situation fairly unique to Shona and Bantu cosmologies, once this elder has died, the assistant continues to have an important relationship with the spirit of that elder/ancestor, *vadzimu*, or they are able to relate to other types of spirits, *shave*, especially if that elder now dead also had a relationship with one of them.³⁰ While the relationships with various spirits, *shave*, are important, the healers emphasize that this ancestral relationship is their primary avenue of access to full TMK.³¹ My informants spoke of the following lines of communication that they must practice to keep the relationship and the access to TMK ongoing as such: (a) in communing dreams, (*kurotswa*) the individual is visited and spoken to by the *vadzimu* and the *shave*;³² (b) when one becomes half-consciously possessed (*kusvikira*) by the *vadzimu* or the *shave*, they are given knowledge; and/or (c) through prayer and appeals (*kupiwa*) directly to the ancestors or the other spirits. In these restricted channels of access then, TMK resembles a family trade secret passed down from generation to generation. In this case, however, TMK is also a family gift or heritage given to an

³⁰ In both the Shona and Bantu cosmology, the spirits of elders (ancestors) continue to be accessible even after they are no longer living. See Gelfand (1963) and Turner (1976).

³¹ Some emphasis, however, is also placed on relationships with nature. Spirits of the forest, *varidzi resango* require separate acknowledgement. Success in finding *muti* and *mishonga* is dependant on acknowledgement of these spirits and their desires. Each *muti* can have as its own criteria attached to the way it is collected. The focus on the “desires” and “interests” of the forests, its spirits, *varidzi resango*, and the individual *mishonga* and *muti* requires specific practices of respect to maintain a relationship with the larger natural environment.

³² A key distinction I learned from informants was the difference between regular dreaming (*kurota*) and dreaming-communing with spirits (*kurotswa*). The latter is then a specially and spiritually sanctified action while the former is common to everyone. Certain specific symbols e.g. lions and appearances of ancestors are consecrated also as part of *kurotswa* although the receiver does not always know what knowledge they have received.

individual. In fact, because it is accessed through a spiritual and/or family privilege certain family and spiritual obligations follow, as we shall see.

Keeping intuition

The term '*kuchengetera*' means to keep safely and securely. With regard to TMK, this means TMK must be kept in the family. To confirm the importance of this fact, several informants said that in the past, a *n'anga* assistant, the *makumbi*, could be either severely punished or exiled from their family if they shared the TMK with the members of other families, even if that member belonged to the same clan or totem.³³ For an individual *n'anga*, then *kuchengetera* demands a conservative guardianship accompanied by a keen and acute sense of appropriate timing. This term, emphasized again and again in my interviews, seemed to be critical because it implied that the custodian must save the knowledge for release only at such a time that it is crucial (Reynolds 1992). My own informants repeated several times that a healer never offers his or her TMK services upfront, even when another complains of sickness. The TMK guardian will only unveil aspects of his or her TMK when the sickness seems desperate and no other common treatment has been offered. This personal practice of discretion helps a healer distinguish him or herself within a sorcerer's circle of TMK guardians with a popular enough reputation that they do not need to advertise.

Therefore, while there are many elders, former healer's assistants, prophets and herbalists who may be familiar with the general aspects of TMK, only the most consecrated *n'angas*, the *godobori n'anga* would be in this circle of individuals expected

³³ Chieftain, totem, and family political rivalries in the past led TMK to be viewed as part of the group power or advantage.

to know the most effective *mapipi*, TMK techniques, *hun'anga*, as well as the most appropriate timing to deliver them. These consecrated individuals form a cadre of elite healers. As mentioned previously, *mapipi* is the personalized logic that the *n'anga* must never share. *Mapipi* is therefore, I argue, a non-commercial equivalent to a trade secret that only begins to be tangible in the individual's expression or enactment of TMK in rituals.³⁴ However, what makes a healer's *mapipi*, *mishonga* and *hun'anga* effective 'kushanda' can be any combination of personal skills and/or expertise – in timing, in presentation of the healing elements, awareness of the surrounding social milieu or spiritual insight, which hence makes it impossible to write down any standard formula for effectiveness. Yet, healers insist that this is the only way to prevent errors. Nonetheless, the liveliness of this approach demands that the individual intuition, *mapipi*, becomes strengthened continuously especially when the diagnosis of illness in the social, cultural and environmental milieu is not codified in a prescribed response. Without such prescriptions, TMK practice demands continued innovation as a response to various problems. The following uses and performances of TMK provide instances into how this may be the case.

Using and performing aspects of traditional medicinal knowledge

The most valuable practices grounding a TMK custodianship are strictly embodied in an individual. Yet, the delivery of services and rituals based on that knowledge are selectively enacted for others in the community. These rituals, oral traditions, healing practices and oral histories all disseminate derivatives of the entire

³⁴ "Magic" is also like a trade secret as Harrison (2000) confirms. His work in Melanesia showed that the performance in chants, words, demonstrations and dance might be "magic" bought and sold like any other trade secret.

knowledge and practices of the *n'anga*, their *hun'anga* and their *mapipi*. During the sharing of services or rituals based on these then, there is always careful attention paid to what is revealed and what is not. This is especially so since the TMK custodian received aspects of the TMK *hun'anga* and *mapipi* as a gift from the elders' and ancestral spirits. Because TMK is a gift, a '*chipo mudzimu*', several informants acknowledged that reciprocity is required (Mauss 1954). While this does not mean that the gift needs to be circulated back to the spirits (in direct reciprocity) it is expected that aspects of the gift (namely the services) do circulate back to those who would be in the spirits' perceived interests – either the family or the greater community.³⁵ In this situation TMK is viewed both as a possession and as a gift that the healer is possessed by. The same dream channel, *kurotswa*, which accesses the knowledge of the spirits (the *mudzimu* and the *shave*) and is kept open in practice to access more knowledge can therefore also receive reciprocal demands from the spirits for a response in ways that resemble a highly developed sense of conscience (Reynolds 1996). Indeed, several of my informants related how his patron-spirit may harass him in his dreams if, for some reason he is miserly with his TMK services for someone who needs them.³⁶ Some of the practices we may see TMK applied to include as follows:

³⁵ It seems most likely that the immediate family is in the spirits first interests. Yet, allegedly because the family also is very close to the *n'anga* his or her cures cannot always cure an immediate family member. It might be conjectured that this is the case because the power of belief does not assist. Therefore, the healer must also heal the larger community in order to receive recognition.

³⁶ While TMK services and rituals based on Bantu spirit cosmology continue to be enacted, it seems they are simultaneously threatened by disbelief. While the reality of TMK emerges from the activation of the collective imaginary through continued reference and performance of the tradition in healing, as well as in oral tradition, there is an unreality of TMK applications that can be spoken of today. This is especially since the language of Shona tradition, magic and ritual is continually neglected in the modernist world of bureaucracy, science and media. See Durkheim (1961) While anthropologists and cross-cultural psychologists (Turner 1970; Evans-Pritchard 1976; Lambo 1978) are among the few who have translated the sophisticated rationality/reality of the social world of African healing, the methods and cosmologies of healing still carry the burden of the colonial, missionary legacies in addition to the neo-colonial "development" disregard for the past.

Rituals

"I brew beer (bira ceremony) to keep my spirits happy so they will continue to give me the (healing) knowledge." ~ Interview with a healer from Chirinda Valley.

Traditional medicinal knowledge has been used as a vehicle in almost all traditional African spiritual/healing ceremonies: whether as a good luck charm; for warding off evil spirits like the *ngozi*³⁷ (E. Turner 1992), *chikwombo*³⁸ or witchcraft;³⁹ as direct individual healing (Chavanduka 1997; Pearce 1993); as a ritual ceremony to further the healing or the power of a clan as a whole (V. Turner 1970); or even for the health of the environment.⁴⁰ In most of these cases, TMK has the greatest effect in visual manipulations, e.g. in individual costumery and performance, dancing, drumming, divining, playing the thumb piano, or the skillful wielding of the *mishonga* elaborated by the personal logic of an individual's *mapipi*. *Mishonga*, *hun'anga* and *mapipi* are all involved in the power of rituals that heal and have social, physical and psychological effects. In these rituals the primacy of family linkages, the importance of links with the environment, agriculture and the life of nature (in rainmaking, pest-eradicating and/or domesticated animal problems ceremonies) are all affirmed.⁴¹

³⁷ The "ngozi", is the name of a haunting spirit or bad conscience bringing illnesses to the relative of a guilty criminal.

³⁸ The "chikwombo", like a haunting spirit, demon, or conscience brings bad luck and misfortune to one who has become very successful at the expense of something or someone else.

³⁹ One such "cleaning" ceremony clears witchcraft with a tortoise shell filled with water and *mishonga*, dipped in by an oxtail whip, a *nusque* that was sprinkled at various sites to chase the sorcery away.

⁴⁰ This is not documented fully that I am aware of but two oral traditions I collected spoke of special spirit mediums who were able to retrieve both pesticide and fertilizer *mishonga* from a boiling hot spring.

⁴¹ Male and female rainmakers, *manyosas* and *mbongas*, respectively are called upon in some cases.

Magic

"The thing that must always be kept is this thing the African healer calls mapipi – it is the way they do their business." ~ Interview with a ZINATHA Chairman from Chipinge.

"African healing is very superstitious, but that superstition can be a reality." ~ Interview a Zimbabwean Poet from Harare.

The performance, narration, perspective and potential surrounding magical objects are essential for the operation of magic.⁴² The custodian of magic skirts a fine line between a narrative that may be plausible and a compelling fiction. Depending on the narration, particular *mishonga* can be magical to some but would not be magical to others, including the wielder.⁴³ In the testimonies I gathered, a healer's *mishonga* is credited with a wide range of capacities. In the *n'angas* narratives about a *mishonga*'s capacity, Shona are given symbolic guides and charms that allow them to carry on their lives and experiences in ways that are unconfined by mundane realities. Examples of *mishonga* powers that extend beyond what is considered 'real' include abilities in the following: (1) To be invincible, it is said that those who have the Mangoromera *mishonga* in them will remain physically unchallenged. (2) For conflict-resolution, a combination of plants is used to make a friend or lover happy after a dispute. It consisted of grinding and combining three roots and adding a small red seed. One is to bathe with this mixture. (3) To persuade, a young lawyer described a white powder *mishonga* that could be used. It was taken either under the tongue when he wanted to be convincing in a law case, or under his toe, in a wrapper, and pressed on when he wanted to suppress the evidence of

⁴² Magic is an index (a message-bearing entity) that stands for past, present or future activity with causes that cannot be verified (Leach 1976). Examples of performance confirming and construing 'truth' is shown clearly by Pearce (199

⁴³ See Pearce (1992) for an additional example in Africa of how this happens.

the opposing argument in a court case. (4) For profit, there are many tales of a small man, woman or child spirit, called a *chikwombo*, that can be evoked to bring success. Sometimes successful musicians or businessmen were rumored to have bought a *chikwombo* – but his or her success is often followed by misfortune if the *chikwombo* allegedly ‘seeks’ payment.⁴⁴ In each of these cases, however, important ritual practices were carried out either by the *n’anga* or, the patient themselves under the healer’s instruction. Thus, while it is known that *mishonga* exist for these magical effects, the practices associated with preparing the actual substance and taking them is an esoteric aspect of TMK, the *mapipi*, which is only given or performed effectively by consecrated *n’angas*. The TMK *mapipi* resides in core intuition built by the same practices that disseminate ritual, services, narration, the *n’anga*’s techniques, *hun’anga*, and *mishonga*.

Justice

“When I say you will be creating more problems on yourself, I mean some people use remote control. You know what I mean? Else they use certain charms around it (a tree), or a string. I know they use something of that sort. If someone comes taking those fruits you probably will not score today, you probably will not move until that owner comes and finds you and starts negotiating with you. ‘Why have you been tampering with my tree? Did you not see the sign?’ He or she will have half a million ways of chasing you from that site. Sometimes you might be able to leave the area, but you will be feeling pains or ill of some sort. And if you know this, you’ll go back to that owner and own up and ask for forgiveness and then the apology is accepted and all is well.” Interview with a Rural District Councilor in Chaminikire Village.

Witchcraft has often been closely tied to traditional forms of justice (Evans-Pritchard 1976). TMK ‘magic’ *mishonga* is also a tool of so-called “witches” (Hove

⁴⁴ Other types of *mishonga* can be for: helping one remain in power as a president or chief; making one fall in love with another; making one do whatever another wants; to hear and find out what is going on in another person’s life; to have sexual intercourse with another without them seeing or knowing how it is being done, *mubobobo*; causing lightening to strike another; making another passive and malleable; or for making a male organ grow in size permanently.

1982) said to prevent the need for formal justice – through the *mishonga*'s “remote control.” This “control” represents the potential of a threat to those who behave in asocial, non-moral Shona behavior.⁴⁵ However, the person who is most often punished is the one who purportedly secretly used the “remote control”, because this is said to be a tool of a witch. Therefore the threat of witchcraft is both the preventative justice even as it can simultaneously call for justice.

Even though The Witchcraft Suppression Act (1889) is a lingering remnant of the Colonial administration, there are allegedly still witches that need to be discovered. A ritual process of *kuuniswa* is held: *Mishonga* is given to accused persons, who will vomit if they are witches, have performed witchcraft, or are responsible for a theft.⁴⁶ If a witch is not found out but is still suspected, cleansing ceremonies with *mishonga* are then performed. Barriers to and protections against certain social taboos and/or asocial and transgressing behaviors (all called ‘witchcraft’), such as theft, gossip, adultery, mischief or malicious plots require TMK *mishonga* as antidotes (Chavanduka 1979). This antidote is usually administered only by consecrated *n'angas*.⁴⁷ According to my informants, this cleansing takes place in accordance with the tribal council, the *dare*, of elders and their interpretation of customs *chivanu*.

Families and clans have often appealed to the *n'anga* if they want their own *mishonga* to carry out their version of justice. “Original *mishonga*” were passed down into family and clan powers used to strengthen and maintain these smaller factions

⁴⁵ See Holleman (1952) for an ethnography on Shona moral behavior.

⁴⁶ If a ‘witch’ is not discovered but is still suspected, special *mishonga* with water “chases” or “cleanses” the residues of witchcraft with an oxtail whip. Evans-Pritchard's (1976) work supported this material.

⁴⁷ See Chavanduka (1979, 1997) for more detailed descriptions of the traditional healer's roles in this regard.

against others.⁴⁸ Testimony indicates that *mishonga* for justice fall into the following categories: (1) *Mishonga* manipulated as a charm, poison or symbol to protect against witchcraft from other families or groups which may include: theft; causing lightening to strike a domicile; destroyed crops; illnesses; or causing barrenness in the women of the family; and (2) *Mishonga* manipulated as a charm, poison or symbol to gain an upper hand against other families or groups (kept within the family again) through the same forms of witchcraft listed above.⁴⁹ While this judicial traditional medicinal knowledge system may seem anarchic at first, the need for local tools, mediations, face-to-face negotiations and responses to transgressions, termed by Radcliffe-Brown (1939) a 'jural norm', is the key to maintaining confidence, harmony and survival in tightly interdependent communities.

Gift

"I cure first, then wait for payment later." ~ Interview with an elderly female *n'anga* from Tilbury Estates.

"Ideal situation, you will treat that person, and if they get well, then he or she can come with a token of thanks. But you cannot turn that person away because they do not have money. Those that charge up front are thieves." ~ Interview with an elderly male *n'anga* from Mountain Selinda.

⁴⁸ The oral history of one informant, spoke of "original *mishonga*" and "deep *muti*" that *n'angas* brought to the older chiefs and kings of Zimbabwe for powers and magic in fighting invasion of outsiders who were either Zulu groups e.g. the Ndebele from the South or British Colonials.

⁴⁹ Although we see how knowledge of the *mishonga* is used for specific purposes, this section also is pertinent to how it can be kept. If it is used to consolidate family, clan or totem power, the *mishonga* will also likely be kept within the family. The consolidation of the power of *n'angas* and their families can also include various interfamilial injustices and manipulations. Other magical techniques involve combinations of animal and plant parts that can protect groups from lightening, bad crops, theft, witchcraft and 'witches familiars'.

A delay in reciprocity for the TMK gift keeps relationships alive in the TMK system, where *n'angas* still operate under the code of “cure first, expect payment later”.⁵⁰ The privilege of paying later (delayed reciprocity) is one that primarily includes family and acquaintances in the nearby community. Yet, this makes the TMK practices a public good sympathetic with illnesses that do not promise immediate recompense. This is specifically because the *n'angas*, as custodians consecrated by the community and the spirits, are designated to provide it this way. It is the *n'anga's* status and privilege command that this be the case (and they are harassed by their patron-spirit in their dreams if they do not).

Sharing traditional medicinal knowledge

“The hun’anga (TMK practices) cannot be applied for.” A healer and sub-headman from Manjolo Communal Lands.

What I have demonstrated in the previous sections is that TMK rituals, practices, gift circulation and justice continually reenact TMK as practices in ways that connect the social elements of the TMK system. This is because the practices and relationships simultaneously fuel the spread of spiritual values, the notion of healing services as a gift, the narratives that compose the ancestral cosmology as well as other Shona TMK and magical symbols to integrate the entire community. The symbols, ideas, narratives and ritual performances inform the community heritage, capture community imagination and

⁵⁰ When cultural and social relations guide economic activities, circles of kin and acquaintances first special “good-faith” exchanges with each other are maintained. The “good-faith” entails certain moral and cultural expectations and privileges that restrict the circulation of a particular good being exchanged. Persons in immediate and intimate sets of acquaintances and relations gain special advantages with regard to that good while others must become ‘family’ first.

make accessible to willing participants the basic potentials of TMK. As a heritage, even derivatives of a healer's personal intuition, *mapipi*, can be the basis of and the spark for cultural institutions and the interactions. However, the *mapipi*, the intuitive practices of the healer, the techniques, the *hun'anga*, and the actual properties of specific *mishonga*, are like trade secrets that are not general community possessions. Rather, these are shared as a special family heritage and right to mentorships based on belonging to a family and maintaining a relationship with the spirits.

As shown in the section on accessing TMK, customary propriety says that only those individuals who continue to practice communication with the spirits can access the TMK gift and are thus supported in their authority over it.⁵¹ These are individuals who have undergone a mentorship as a *makumbi*, have begun to dream/commune, *kurotswa*, with a spirit, are legitimated through a special "coming out" ceremony for the healer, and follow the traditional codes on form and practice (Gelfand 1962). Therefore if there is circulation of TMK practices, *hun'anga* or the secret properties of the *mishonga*, outside of individual healers or their assistants, the *makumbi*, significantly divergent social, economic and political changes must be occurring. As stated earlier, a *makumbi* could be exiled from the family if he or she shared TMK with others. Therefore, sharing TMK, whether it is services or secrets, has always been customarily conservative, *chengetera*. This practice consolidates individual, family and clan power but still allows other community members to access TMK aspects and services.

⁵¹ I found abundant comment on how the spirits (*shave*) are credited for providing a person – a hunter, healer or leader, with their talent. Interestingly, I had also received testimony that the spirits (*shave*) can also cause odd characteristics - such as one who liked to eat dry maize cobs, or had others that compelled funny comedic behavior like acting like a baboon. One informant went so far as to say that there was an ambition behind drinking the Seven-days maize beer: In order to get possessed by a spirit-*shave*. In drinking, it is said the spirit (*shave*) may come out and tell you things.

Valuing traditional medicinal knowledge custodians through symbolic capital

“Normally, in the community, there will be one n’anga who actually stays specifically for the mambo (chief).” ~ Interview with a sub-chief of a village in Nyahode Valley.

At that time the local community acted as a professional body in that the whole community was involved in validating a new healer’s qualifications as well as in disciplining those healers who abused their authority. Before a healer was allowed to practice medicine on his own, a graduation ceremony was usually arranged at which members of the public, particularly community leaders, were informed about the healer’s qualifications. ~ Chavanduka (1997: 1-2)

Standards that determine who is either a “good” or “mediocre” practitioner of any kind must evolve through the feedback of members in a cultural field (Bourdieu 1993). In industrial countries these standards may become enforced either by law or by interest groups.⁵² In Zimbabwe’s cultural and symbolic field these ‘codes of consecration’ (Ibid: 17) help determine who are “good” TMK *n’angas* and/or “bogus” TMK *n’angas*. In my research I found that generally many would like customary practices to still inform the consecration of the “good” *n’angas*, the “*godobori*”.⁵³

Some *n’angas* I met had gained symbolic capital (Bourdieu 1993) for their TMK practices in the larger community. While it is customary TMK healers generally do receive some token payment (a goat, a hoe, a brass bracelet, or money) for their individual healing services, patients frequently cannot afford to remunerate in monetary terms.⁵⁴ However, social capital may be the “most valuable form of accumulation in a society” (Bourdieu 1977: 185) as it enables strategies for the future accumulation of wealth (including monetary wealth). As TMK is a spiritual gift, *chipo mudzimu*, it is a

⁵² One such international standard-setting organization is the *Codex Alimentarius* that is highly informed by the pharmaceutical and biotechnology industries in its biases against natural and herbal remedies.

⁵³ The codes for “true” traditional healers are complex and changing. I was told the *n’anga* that follows the traditional codes is given the name “*godobori*” in recognition of their difficult adherence to these codes. This means they heal using medicine/magic given by the spirit/*shave* whose wisdom and will is shown through their communing/dreaming (*kurotswa*), and/or traditional divining devices such as the *hakata* – carved wood or bones or rods that answer questions (*fembera*). Further they do not market their services.

⁵⁴ It is even considered a sign of a “bogus” *n’anga* if one charges before the patient is cured.

rare item that only certain persons may possess, but this is so because it is simultaneously kept safely, *kuchengetera*, for others. This possession confers a spiritual/cosmological authority, yet at the same time this authority has been transferred to political ends. Several *n'angas* I spoke too had gained important roles in the community as the chief's sub-headmen, clan leader, or councilor. Presently, these traditional roles directly inform and interact with the Rural District Councils who administer state mandates.⁵⁵

Conclusion - lively practice

Zimbabwean folklorists Emmanuel Chiwome (1996) and Munashe Furusa (1996) emphasize the significance of practice and tradition through oral forms. Oral tradition is a “device” embedded in community philosophy (Ibid: 22). They postulate that oral traditions, including those associated with TMK, are integrated with abundant activity since it guides behavior and is responsible for the reproduction of values for much of the society. The following quote suggests this practice keeps cultural resource like TMK alive in the appropriate people. The voice of the quote is a fictional elder councilor drawn from the Zimbabwean novel, *Nehanda*, - the story of a formerly consecrated and popularly remembered historical spirit-medium (Vera 1993:89):

“Our elders have taught us the power of words. Words must be kept alive. They must always be spoken. The white man wishes to remain a stranger to us. It is not only important that a man speaks with words, it is also important what gestures he uses for his

⁵⁵ If gender is considered with regard to symbolic capital it is clear to Chavanduka (1997: 47) that in addition to becoming a consecrated *n'anga*, there are special roles for elder women, called *nyamakuta*, or *ambuya*. Her special mid-wife role establishes her as an authority on women's issues, which is reflected also in the tribal councils. The *ambuyas* and *n'yamakuta's* role is central to the rural women's experience, perhaps explaining why 54 percent of all healers are women (Chavanduka 1997). Customarily, however, women are not in primary positions of traditional authority as chief's sub-chiefs, or as clan-leaders. As *n'angas*, however, both men and women can be extremely influential as one of the chiefs' councilors, *machinda*.

argument. The stranger has refused to sit among us...He says he has spoken. He carries his words in his palms, between his fingers. His words tremble with the wind. We will not surrender our words onto the side of a calabash which a child may break one morning. He has said that our words will last beyond several moons. Does he not know that there are other words for the future, plentiful like seeds? The white man held the paper like a sacred thing. His hands shook and we mistrusted him.”

This quote points to the idea that once words are written down they become objects attached with risk. In a copied static state, anyone, even a child or someone without individual intuition or knowledge of the words, can practice or cite them callously since they “may break them one morning”. Thus, the implication is that if the written word is brittle, then the spoken word is flexible, alive and appropriate, especially if it is practiced with appropriate timing by consecrated authorities in a position to nurture the application of the words. The consecrated authority, the *n’anga*, as I have shown is also entrusted with a responsibility for maintaining customary practices in their relationships and in their custodianship with the TMK. Since TMK is a heritage that is not delivered for commercial gain or profit, it maintains its significance as an ancestral gift propelling the continuation of ritual and healing practices. These customary practices also maintain the bundle of relationships between the ancestral spirits, the environment, family and community that comprise the TMK system. While the community and the perceived will of the ancestral spirits consecrate the *n’anga* in these practices, the *mapipi* reveals that TMK is still individual. Therefore, the core of the cultural resource that is TMK is incorporated into the practices of the TMK *n’anga* who accesses, keeps, uses and shares it for his or herself, as well as others who value him or her. In these necessary

circulation activities of the TMK, the core *mapipi* is also built upon or derived from in ways that make it the foundation of any newer cultural resources to come.

However, it has always been the individual practices of accessing, keeping, using and sharing TMK that poses the most resistance to the assumed image of TMK as a ‘common’ heritage encapsulating a bounded cultural entity or TMK system. Therefore, the next chapter renders explicit the ways in which practices based on TMK, but not upon tradition, exist in both conjunction and divergence from customary practices of the TMK system. These non-customary practices have derived some of the more common and accessible aspects of TMK to the extent that Zimbabwe’s cultural heritage is both undermined and supported as national field of cultural production.

CHAPTER THREE: Sites of vulnerability in the traditional medicinal knowledge system

International agendas calling for an ‘institutional reform’ to harmonize domestic arrangements with the international intellectual property regime (Rodrik 2000) would need regional allies to facilitate the abstraction, extraction and dissemination of cultural resources. Examining the existence and impacts of such regional agents, with divergent interests and practices in the derivatives of traditional medicinal knowledge, helps illumine both the sites of vulnerability as well as the sites of resiliency in the TMK system. This situation should be weighed for final considerations of how to distribute entitlements and rights to TMK practices in Zimbabwe’s National Sui Generis Legislation.

The Case of the African Potato

The following description is about one derivative of TMK used by non-customary agents that I adapted from newspaper articles and my own research while in Zimbabwe. I will present it before I analyze what may occur as a result of this situation.

The African Potato⁵⁶, Latin name *Hypoxis Hemeracallidaceae*, was a ‘hot’ potato in Zimbabwe in the year 2000. The potato started rather nondescriptly, appearing alongside ginger as a remedy for stomach aches and other vegetables for consumption in some of the street markets in Harare - including the one next to the main public transport station on Union St. and Julius Nyrere St. Who first began marketing it for its ‘cure all’,

⁵⁶ Interestingly, the African Potato has no known Shona name that I could discover. Still, this *mishonga* seems to be popularly called the “African Potato” all around including in Zambia and South Africa.

“*gutchu*’ effects can not be known at this late date - so many *muti* merchants have been marketing it that way since seeing its increased popularity with the Zimbabwean public. Its’ popularity, stems not from its new notoriety as Roecar Holding’s patented source of active ingredients for curing cancer, but from citizens who have responded to the potatoes’ rumored anti-HIV/AIDS properties.

During the height of the potato’s popularity in the markets, some *muti* merchants, (none of them consecrated as healers, but allowed to sell medicinal plants in the street markets) began to display another tuber they also called the ‘African Potato’. However, the one the *muti* merchants were selling as “*gutchu*” was not the correct tuber. Accusations of fraud and concerns for public safety in diagnosis and use of the right healing ingredient resulted. The president of the Zimbabwe National Association of Traditional Healers (ZINATHA), Gordon Chavanduka, was forced to come on national television and distinguish between the bogus potato and the real, curative African Potato. Photos of the different potatoes were published in the national papers. Although Chavanduka did not reveal the full secret of what the potato cured, how to prepare it, or in what dosage it was safe to take it, it was evident to most of the population that the potato he identified as the “real” African Potato was a powerful medicine. Knowing this, Chavanduka insisted that consumers of the African Potato should consult a traditional healer for their health needs so they could be assured they were given the right *muti*. Only those healers licensed by ZINATHA themselves were capable of this according to Chavanduka.

Agents of separation

The interests of metropolitan, cosmopolitan and outward-oriented individuals and institutions in the derivatives of TMK are different from the interests of customary ones. For instance, in favor of mobilizing TMK derivatives for profit and recognition, the code of responsibility to local communities is neglected by the *muti* merchants. Members of ZINATHA, ‘muti merchants’, the *propheta*,⁵⁷ and scientists who use traditional medicinal knowledge by an alternate set of codes therefore form a category of individuals whom I call ‘agents of separation’. Each ‘agent of separation’ is sanctioned by either his or her membership in a non-customary group or by his or her official recognition by bureaucratic, legislative or urban support. For instance, *muti* merchants first gained municipal sanction to sell *muti* in ‘The People’s Market’ (Pendanazahmo) in the capital in 1970 while the Rhodesian government was still in power (National Archives, Appendix II). ZINATHA, was also officially recognized in 1980 by the Republic of Zimbabwe that replaced the Rhodesian government (Chavanduka 1997).

Yet, both of these two ‘agents of separation’ pose a new interface between the practices that build the relationships and links of the healers and his or her community dependant on the traditional medicinal knowledge system. This can be seen when ZINATHA identifies itself as the national political and economic authority of *mishonga* via the official media proclamations related to the African Potato. In this move ZINATHA also contributes to the displacement of the embodied spiritual and social authority vested in traditional healers. Therefore, while traditional healers practice is tailored to meeting responsibilities in the local communities that consecrate, ZINATHA looks to a different constituency for authority when it relocates its official ranks and

⁵⁷ A *propheta* creolizes healing traditions in Zimbabwe with his or her use of the Gospel in ritual and his or her attribution of God, *Mwari*, to the healing effectiveness.

responsibility to the urban poles first and the national level second. Hence, as a result of such interactions, ZINATHA's president, Gordon Chavanduka notes several problems that may ensue in the future. He has given caveats against, (1997): (1) the professionalization of the healer's practice (ibid: 41); (2) professional disregard for spiritual medicines (ibid: 27); and (3) the technical focus on herbal expertise that is dismissive of the ritual and symbolic milieu in which the herb is still used (ibid: 30). The problem he considers is that,

There is an inherent danger that traditional medicine will be defined simply in terms of its technical herbal expertise, that this experience will in turn be recognized only for its empirical pharmacology, without reference to the symbolic and ritual matrix within which it is used – still less to the social matrix in which those rituals and symbols have meaning at any particular time and place (Chavanduka, 1997: 267).

As Chavanduka suggests, much of the ritual and symbolic practices forming the social matrix in the TMK system are in danger of being made obsolete through various professionalization and officialization schemes. Yet, is ZINATHA's new political union, with healers as members, adequate to represent this entire social matrix, especially as it builds by individual practice? In many ways ZINATHA can consolidate the interests of healers because it has a membership 24,000 from all areas of Zimbabwe (Ibid: 26). But what about the interests of the communities who depend on the healers? Currently, ZINATHA is involved in several non-customary officialization schemes, including: (a) advertising and marketing the physical healing capabilities of the *n'anga*, (b) fabricating capsules of *mishonga* and selling them to the cosmopolitan and urban populace, (c)

setting up two colleges of healing in the major cities and, (d) offering official statements and plans to media and researchers about HIV/AIDS.

None of this activity, however, is directly accountable to the local communities or ensures that the TMK benefits will be disseminated to them. In fact, much of the new practices will directly interfere in the healers practices which can unify the TMK system overall. Particularly, the right the community has to consecrate which healers and practices are “fit” will be undermined, as will the solidity of the healer’s practice that is non-commercial. However, while ZINATHA may pose some troubling questions for considering the protection of TMK resources that underpin the TMK system, Chavanduka’s warning above is compounded by the activity of the *muti* merchants who directly threaten the non-commercial customary practice as they are becoming the new economic authorities of TMK, shown in their objectification of the Potato. The following analysis I offer is partly derived from the Marxian literature on commodity fetishism and reveals how the commodification of the Potato liquefies the symbolic capital of the healer and his or her TMK, as the Potato itself appears to be instilled with the new and total source of value. This analysis also suggests that as monetary value is established by private, exclusive groups or ‘agents of separation’, the rights accompanying that profit are more likely to accrue to those members of private groups rather than to the non-exclusive, socially ordained healers who appear to inhabit the ‘common’ public space. This we shall see as follows.

First. There is a reification of the meaning and symbolic identity of the African Potato. Previously, the African Potato was one of many *mishonga* wielded in the healing repertoire of traditional healers who typically offered it with certain traditional and ritual

prescriptive expectations. In the *muti* merchants' advertisements, the *mishonga* appears no longer as a magic/medicine *mishonga*, but as a new medicinal commodity— a “quick fix” product, or pill you can pop for a quick cure of the symptoms. In both cases, the African Potato has symbolic inferences attached to it.⁵⁸ However, when ‘agents of separation’ access both the physical *mishonga* and the derivative of TMK,⁵⁹ the traditional healers lose one of their secret implements that form their repertoire and authority over ritual, technique, magic and healing.⁶⁰ Thus, when merchants market and sell the potato, the source of ‘magic’ effect is redirected to the potato itself rather than to the hands of the traditional healer (who draws out the *mishonga*'s power in ritual and customary forms of practice).⁶¹ The potato is then re-identified as a “magic” commodity that has been moved beyond the direct control of those *n'angas* are responsible and consecrated in identifying and wielding its utility in practices that benefit an entire community.

This is important to note because while TMK is perceived in development discourse as a static inherited body of knowledge of natural healing substances, (a resource) Zimbabwean *n'angas* may see several utilities in *mishonga* like the African Potato that can change to fit different circumstances. Thus, freezing the utility of the African Potato, as Roecar Holdings did with its patent on it as a cure for cancer, makes obsolete the local roles in interpreting and variously wielding the utility of the *mishonga*

⁵⁸ Whether it is the magic suggestion of TMK or it is the alleged utility in the potato that is effective it is assumed that it has been established previously.

⁵⁹ Technically, gaining the information derivative that “tells” the utility of the *mishonga* is the same as gaining either a trade secret or the *mapipi* of a healer's knowledge.

⁶⁰ This narration appears as a dance skirting the line between fantasy and feasibility. And it the determination of what, is or is not, feasible is based on historical knowledge bases that could include oral traditions that are not always distinct from scientific theories.

⁶¹ This is usually the definition of commodification: the liveliness of services, human creations and/or the reproductive sources of nature become vested solely in an object that erases the history and genesis of it itself. See Mikilitch (1998) for essays on how this is viewed most commonly today.

dependant upon timing and circumstance. In some instances, the African Potato may possess power to cure several illnesses. However, by isolating the dosage, toxicity, and active ingredients of it, one can actually deny the surfacing of various potentials (magical, ritual, psychological or social) of the *mishonga* to respond to other illnesses.

This essentialist approach is partially avoided by the *muti* merchants, however, who were astute enough to call the African Potato a “cure-all”, *gutchu*, because, like the *n’angas*, they choose to leave open the option of what the Potato actually cures.⁶²

Second. The appropriation of even one derivative of TMK from the *n’angas* can exaggerate the alienation between the healers and his or her TMK field or community. The appropriation and transferal begins vis-à-vis the official recognition of *muti* merchants, ZINATHA and University of Zimbabwe scientists as authorities.⁶³ This is especially as the new popularity, visibility and accessibility of these ‘agents of separation’ is heightened by their new schemes or channels of exclusionary access e.g. the media, the bureaucratization processes, licensing, or through the creation of a discrete private spaces and memberships such as in educational institutions or with licenses to sell *muti* in the markets. The access to and creation of private spaces and categories gains visibility for the *muti* merchants who become better positioned to be recognized as entrepreneurs, innovators and creators of “novel” applications. Their practice and membership in exclusive spaces and categories also makes them appear therefore more deserving of rights that would not be extended to the *n’anga* in the TMK system because

⁶² Appendix I discusses that as TMK is a family secret, each family *n’anga* is expected to have a different repertoire of *mishonga*. Some may name the same *mishonga* for different illnesses or different *mishonga* for the same illness.

⁶³ This alternative system is characterized by the empirical burdens of proof that only the technological advanced may access. See Rifkin (2000).

he or she is still viewed to hold a 'public' service. Subsequently, his or her own TMK remains misrepresented as "common heritage" knowledge.

Third. It is possible to notice traces of distorted desire, fetishism, in the individual potato (commodity) that has had its healing utility amplified by the attachment the signifier of a "cure-all", *gutchu*, ability (Mikilitch 1998). Involved now is risk for the patient/consumer who accepts an assurance of effectiveness from *muti* merchants who are both untrained and unconsecrated in healing knowledge. While the healer has had his or her power to wield ritual and magic through this particular *mishonga*⁶⁴ weakened by the competition of cheaper, easier access to some of his or her own prior material TMK, the potato has its power amplified as a fetishized more exclusively 'modern' capsule of power.⁶⁵ The potato (now a commodity) is attached to symbols that make it appear magical as part of an alternate, modern and "new" symbolic system' where 'objects of every culture' reign.⁶⁶ The customary value that TMK and the *mishonga* is an ancestral "gift" for the healers and therefore also requiring a reciprocal "gift" maintaining responsibility for the entire community is obliterated. At this point it is not hard to imagine the extension of a human-commodity-fetishism to even the traditional healers

⁶⁴ The *mishonga* appears as a ritual fetish, because the entire nature, power and technique of each *mishonga* as a magic is not revealed and therefore holds properties that make it highly desirable even if it is only the physical part that gets fixated upon. See Taussig (1993) for more on ritual fetishism.

⁶⁵ Mikilitch (1998) suggests that the new marketing aspect of the potato can only be a "*satellite and alibi of exchange value.*"

⁶⁶ See Haraway (1997: 138) who writes of the untrope "culture of no culture". I take a bit of liberty with her idea to extend it to the globalization also of objects of either 'no culture' or 'every culture'. As Hannerz (1996) suggests, cosmopolitan movements are particularly important to examine. For instance, metropolitan and cosmopolitan areas of the world are increasingly faced with objects that appear to be 'objects of no culture' or 'objects of every culture' e.g. the Hindu *Om* or Che Guevara's visage on t-shirts sold in nearly every country. These symbols are then fabricated as cosmopolitan commodities. Baudrillard (1975) names the current commodification of symbols through information technologies the 'simulacrum' as derivatives of information, transferred from their context, may only simulate reality. The 'reality' of the labor of production, protection and consecration in the TMK system is not credited, but elements of it are simulated. For an object to appear as an "object of every culture" the packagers of it as a product must deny its lineage, custodianship or special rights and instead makes the artifact a *terra nullius*.

themselves once his or her practices and his or her images are exploited separately from his or her own agency in the TMK system. After the separation between healers and TMK is finalized, the authority transferred to merchants, political healers, pharmacists, and scientists, the *n'angas* could become an amusing relic of the past, who are no longer authentic practitioners but may be still asked to perform a caricature of the traditions for new forms of ethnotourism.

Fourth. By using the “African Potato” the *muti* merchants directly present the Potato as a product with a new English-derived pan-ethnic identity. It may seem apt in the capital that a new name would be used.⁶⁷ However, the English name is one that pulls individuals into non-Bantu languages. This is important to note because ideas like *mishonga*, *n'angas*, *mapipi* and *madzekirira*⁶⁸ do not and cannot occur in English without the translation casting superstition and doubt on their reality. Cultural concepts and language used by local ‘agents of separation’ in new settings can have displacing effects. This effect is much more than a mere modern symptom of hybridization.⁶⁹ The transport of TMK derivatives to the urban poles of power and officialization represents a relocation, competition, challenge and counter to its original customary and symbolic arrangements and circulation. For some *n'angas*, many who are not literate (Chavanduka 1997), this setting represents another space of exclusion where the ‘agents of separation’, as cultural brokers, may be legalized, formalized and popularized. Thus, the appropriation of derivatives of TMK can then also relegate the traditional healer, who is

⁶⁷ A capital is often a cosmopolitan meeting point and a ‘contact zone’ of many ethnic groups whose only common language often seems to be English. See J and J.L Comaroff (1992) for further material on “contact zones”.

⁶⁸ “*Madzekirira*” is the illness of insomnia, anxiety and restless daydreaming. This illness is one of the unique areas of TMK healing. Several informants believe only the *n'anga* can cure this illness.

⁶⁹ This is so because the prior century of colonial and missionary officials had demonized traditional healers and denied official recognition of Bantu languages already.

in conformity with the customary codes, to remain strictly in the communal rural districts where social goods are seen as collectively owned. In this way, because the customs and agents of TMK formed over time in a particular territory, even in the age of globalization, they become even more, 'territorialized' or localized. They may be pressed into their prior and customary territories while the metropolitan representation of 'agents of separation' may gain exclusive rights to TMK for all of Zimbabwe.⁷⁰

Testimonies of traditional medicinal knowledge system loss

While I have sketched above some of the trends of mobility and modernity surrounding the African Potato that could lead to the disinheritance of an authority and rights over TMK for *n'angas*, the disintegration of the TMK system and its benefits for local communities interests may already be occurring. The possibility that traditional practices can become increasingly obsolete, or "underdeveloped" with 'development' has been postulated by several social scientists already (Yapa 1989; Appadurai 1990; Sen 1981). With regard to the TMK system, the divergent practices of the agents of separation represent simultaneously an alternative and a challenge, especially because these agents have a powerful urban and cosmopolitan constituency supporting them. Further, since the customary authorities, rituals and practices do not possess the same popularity in the metropolis, each of these then face a heavier burden of proof upon their non-superstitious reality in the same sites of bureaucratic consecration, formalization and exclusion.⁷¹

However, testimonials of "damage" to a culture and "culture loss" have begun to establish legal precedents useful in translating the rights to custom in courts (Merry

⁷⁰If they do not dissolve aspects of the healer's custodial role into liquid monetary assets before this happens.

2001). For instance, Kirsch (2001) has shown that litigants must demonstrate “culture loss” through reference to change in subsistence lifestyles or decreased capacity to live out cultural knowledge. In a case of environmental and cultural damages in the Bikini Atoll the judge found that remuneration for the litigants property is “whatever the property is worth to him,” (Ibid: 172). This focus on the profit/value of a ‘property’ to an individual is typical of the ‘property for personhood’ argument some legal scholars have begun to wield for indigenous peoples (Radin 1987). However, this extreme position that persons who do not have the same proprietary forms must do so before they have any constituency has been somewhat mitigated by additional cases that have been open to recognizing the value of an entire subsistence way of life. Therefore, the most difficult task becomes to determine the significant indicators and sites of culture loss. Is it in the “heart and mind”⁷² or is it in more tangible practice and orientation, the *praxis*?⁷³ In several of these cases Kirsch (2001: 168) posited that dual registers - belonging to and being in possession of culture or traditional knowledge - carries with it strong testimonials that have equivalents to property, rights, responsibilities and materials. Either way, the links between directly economic and utilitarian values and the social and symbolic values of cultural systems need to be made more explicit if they are to be understood in formal judicial institutions. The insolubility of economics, culture, rights and subsistence systems can only be viewed as particularly significant because although

⁷² Anthropologist Nancy Pollock testified that culture is in the “heart and mind”. See Kirsch (2001). Bourdieu (1977) on the other hand may suggest it is in the *praxis* - the knowledge/action and practices of a culture.

⁷³ All of these questions of course haul in many other anthropological concerns over identity. Which identity (gender, national, tribal etc) has the most at stake in culture, subsistence loss and/or identity? Both personal testimony and overall systemic shifts can show major cites of change that is occurring. The systemic approach reveals increasing obsolescence of whole subsistence and collective social institutions while the personal confronts us with individual damages akin to the possessive individualism ethic of private property.

cultural and economic rights and cultural and economic loss are viewed as equivalent, they are more likely unique 'sui generis' to each other. In Zimbabwe's traditional medicinal knowledge system, for instance, we saw that the TMK practices that wield symbols, magic, rituals, relationships and the spiritual valences are part of the engine of the entire TMK system, and to conscript out any of these elements with pecuniary terms would deny its lively interconnectedness and growth towards the others.⁷⁴

Therefore, linking the practice, that conjoins with the healer's personal intuition, *mapipi*, to an economical loss of a way of life is difficult, but not impossible. A professor of African Folklore and a former *makumbi* laments, for instance, that knowledge comes and goes depending on its continued use and application since: "*acquiring the knowledge is easy, but it is just as easy to lose it without practice*". While the professor may have chosen to participate in the modern educational institutions thus allowing the practical traditional medicinal knowledge to be lost, the loss of TMK practitioners indicates an even larger threat to the local community dependant on the TMK system to fulfill its rights to culture and health. Thus, loss can also be identified by a community member complaining of a loss of customs and practice of the customs, as is shown in a 1972 quote from Chief Chivero:

"Our world was a much better world than the present one because then we knew our traditions and customs. Today the tribes are mixed up together and it is difficult to identify oneself with ones' own customs. Nowadays, no one has respect for anyone. They are all like the white people. No one respects customs. In the villages the men are no longer good old people who know their customs. They are as people in Harare (the Capital), where people do whatever they want with no regard to the feelings of other

⁷⁴ Although, in some places in Melanesia they have been traded. See Harrison (2000).

people. There are n'anga thieves. They are just stealing money from people. They are no longer the good and true n'angas we used to know. You'll be lucky to find one good n'anga, the rest are rubbish." (1972 Interview with Chief Chivero; National Archives of Zimbabwe).

This statement, while loaded with sentiment also highlights economic elements. The “*n'anga* thieves” who are “stealing money from the people” are those same “bogus” *n'angas* said to “love money too much”, *kuda mari*, and who therefore charge for their services without curing first. Chivero’s statement, recorded in 1972, also marks the beginning of divergence from customary codes by entrepreneurial healers corresponding with the first formal organization of traditional healers, the National Varapi Organization under Macheka Gombera in the early 1970s (National Archives). This reflects frustration of community at being forced to face increasingly fraudulent *n'angas* who are not accountable to local, customary codes. Yet, can being confronted with fraudulent *n'angas* represent a tangible economic loss that could be upheld in court without a legal framework that recognizes a community right to consecrate their traditional healers? As we have seen in the section on the ‘agents of separation’, the “loss” for the community can be another individual’s political, scientific, religious or entrepreneurial opportunity. The escape of traditional codes and expectations thus carves an innovative service that does still provide certain other primarily urban interests. Thus it is difficult to speak to an ‘absolute loss’ that affects all Zimbabweans. Nonetheless, the TMK system still benefits many, including persons who may not be able to gain as much benefit under a privatized health care institution (Navarro 1976):

“But those nurses and doctors use those tablets that are not theirs. They are from the Ministry of Health. As an individual one can feel pity, but if they do in the clinics they

will get fired or sued. No one can listen to you there." ~ From an interview with an elder (sekuru) and n'anga from Manjolo Communal Reserve.

It is as if it is assumed that empathy is contradictory to the economic equations of efficient institutions.⁷⁵ Thereby, some illnesses are then called "external" to the clinics "job" and therefore accrue costs only upon the patient.⁷⁶ Nonetheless, the community right to not lose their current health supports must be weighed simultaneously against the rights of 'agents of separation' who see healing more in political or economic terms. Still, the testimony I gathered confirms that many healers continue to maintain that TMK is an ancestral and spiritual gift and hence it is also either a duty, service, talent or privilege that should not have a pecuniary valuation placed on it. In the continued embodiment of this ideal, healers are the most sensitive to potential threats to TMK use, suggesting an insolubility of TMK with other knowledge spheres or schemes based on economics. For instance, consider the words of spirit-medium, *svikiro*, healer and elderly female, *ambuya*, of Chaminikire Village:

"If I change the way the mishonga are used the svikiro-spirits and ancestors will not be happy and they will not show me the mishonga the next time. The supreme beings will be angry and they do not want to punish people but they can even bring hunger and bad luck of some sorts, thus we need to conserve these traditional herbs. It is not proper for the

⁷⁵ However, the effectiveness and efficiency of health services in Africa in particular have not been adequate to meet the needs of the populations. See Yong, Millen, Irwin, Gershman (2000).

⁷⁶ One of my informants who had been diagnosed with "madness" sought to get better service at a private clinic but later deduced that his long list of bills, the new appointments for testing and the new headaches accompanying his "treatments" were not becoming effective, *kushanda*. However, the quote above by the elder, *sekuru*, shows that healers realize that the traditional code of "cure first" regardless of an individuals ability to pay, is worth something. Value is tangible especially in the contrast between the existence of sympathy and its absence, especially when there is a new monopoly on the types of available health services available.

muti to be changed and used to suit certain other conditions. When they take it from me here will mean I will not have access to this medicine."

As she concludes, "access" is crucial. Yet, *Ambuya* implies that she herself, as an individual practitioner, would deny access to those with intentions of changing the *mishonga* to "suit other conditions." This is because, as she forecasts, if it were otherwise she will not have access to the transformed medicines. Presently, this *svikiro* is consecrated in her access of TMK because she engages in the required relationships with both the local-rural community and her ancestral spirits. These are her primary relationships and provide the orientation she needs to help her to fully embody the knowledge through the practice of accessing, keeping, sharing, using and obtaining consecration. *Ambuya* is also one of the powerfully ordained *godobori n'angas* and as such, she is ritually possessed by a mediumship between the community, the spirits and the greater natural environment of *mishonga*.⁷⁷

Her statement therefore raises the question, can the practitioners of TMK (spirit-mediums and *n'angas*) co-exist with another system that has different codes, 'other conditions' and values determining its operation? Time and space overlap between the spiritual TMK system and the politicized, mercenary system of the African Potato, ZINATHA, scientists of the University of Zimbabwe and the *muti* merchants. The dynamics of each are different: the tightly woven TMK system that remains based on

⁷⁷ It seemed in my interviews that this *svikiro* and *ambuya* takes her consecrated position in the community as well as her mediumship of the ancestors very seriously. Her relationships, guided by traditional codes and the valence of TMK as a spiritual gift, *chipa*, provide a strong compass for her role. When she is being exposed to 'modern things' it can distract her orientation because they are part of a different, non-traditional schema. She testifies that this effect throws her off. She told a story of how when she smells someone with cologne or receives clients who are eating oranges her spirit, *shave*, will make her go into a coma. On one occasion, she recounted how when her clients were eating oranges and did not warn her she went into a coma that lasted half of the day. Statements like this suggest that mixing the modern with traditional for some truly traditionally-guided practitioners, *godobori*, is like mixing oil and water.

sacred, family, spiritual and magical conservatism, opposes the modern system that funnels TMK derivatives centrifugally outwards so that the benefits do not always return to the source.

Ambuya predicted the value of her *mishonga* declines if it is used outside of her custodianship. In this view, she may be prescient to note that her “gift” will not be reciprocated under non-customary practices, i.e. there will be no responsibility to return the benefits after outsiders have accessed the knowledge. It is inevitable that issues of access to TMK and benefit-sharing of the products drawn from it need to be examined with special regard to rural and local communities. Yet, other traditional authorities are also wary of other practices and seem to agree that there is an insolubility of the customary principles based on the spirits particularly with the urban mercenary interests:

“Traditionally, long back, the whole thing (traditional medicinal knowledge) was not supposed to be commercialized. But because of changing times it is happening. That ultimately, traditionally, I’m saying is not appropriate. This thing of healing and all those things do not really come out of your own initiative. There are resident spirits, masvikiro who are on you and they do not really like to be commercialized.” (Interview with the sub-chief (*subuku*) of Tilbury Estates)

This quote from a village headman, the *subuku*, suggests that the traditional community authorities, in addition to *n’angas*, still see TMK as an item without a price, especially because TMK is attached to spirits⁷⁸ who “do not like to be commercialized.” In the customary view the spirits, TMK, *n’angas* and *svikiros* are all intimately related and viewed as inextricable essences. Clearly, TMK is primarily a symbolic spiritual

⁷⁸ Recall that this attachment is the foundation of the knowledge access – through processes of *kurotswa*, *kusvikirwa* and *kupiwa*.

treasure, heritage and practice that is an inalienable possession, needing a separate sphere of exchange and circulation, or at the very least, separate and unique forms of protection for it.

Conclusion

The practices of the traditional medicinal knowledge system fuel not only Zimbabwe's cultural economy but also aspects of its growing information economy as represented by the 'agents of separation' using derivatives of TMK for political, mercenary and academic purposes. Hence, these derivatives are used, synthesized and manipulated in new ways that are not always attached to the customary practices. This is especially the case as democratizing access to information resources and services has more popular support by bureaucrats and urban Zimbabweans entertaining non-customary lives (Deve 1996). However, as non-customary practices dissolve aspects of the customary TMK authority, practices and codes, it is important to recognize how specific entitlements to cultural practices may be incorporated in Zimbabwe's National Sui Generis Legislation to preempt 'culture loss.' The following chapter addresses how this can be practically applied.

CHAPTER FOUR: Considerations for the National Sui Generis Legislation

Africans felt guilty about the inferiority of their culture. This complex allowed them to be deprived of the rest of their human rights like franchise, nationality and the satisfaction of human needs. ~ Chiwome (1998; Preface).

Young urban Zimbabweans sometimes call the things of their cultural heritage “*saga*” for “boring”. Yet, whether Zimbabwe’s Shona and Bantu heritage is popular or not, traditional medicinal knowledge is still the source of highly valuable and profitable foreign pharmaceutical companies. Further, as we have seen in the prior two chapters, the utility of TMK, both in the derivatives and the overall repertoire, is revealed not in the TMK products, novel or not, but in the practices of its agents, customary and non-customary, which are as contemporary as are the modern pharmaceutical companies. In both chapters as well, the material substrates of TMK are revealed as actively attached to the lively symbolic meanings, rituals, assumptions, actors and strategies of TMK delivery. Therefore, this chapter will review Zimbabwe’s National Sui Generis Legislation in its likelihood of protecting intellectual, plant genetic and cultural resources only as alienable substances, not practices. The conclusion of this review will be that this alienating approach, with its lack of focus on contemporary cultural practices, would justify a complete neglect of local customary and non-customary interests and practices that need effective ‘sui generis’ protections to guarantee entitlements to both cultural and community rights over their genetic, cultural and intellectual resources, on the ground, ‘in situ’.

Initial goals

The African Union's (AU) call to its member states to create 'sui generis' protection of intellectual and plant genetic resources has taken hold in Zimbabwe where the AU Model Legislation was reviewed by various scholars, non-governmental organizations and development agencies for national application (The Nyanga Workshop). Initially, it had been determined that the National Sui Generis Legislation must identify a "legally enforceable right that will exclude others from defined commercial acts or acquiring remuneration for certain uses of genetic material" (Chitsike 2001: 10). It was also expected that the National Sui Generis Legislation must define both what can be protected and the scope of protection e.g. what entitlements are to be granted (Ibid: 10). It is envisioned this is possible if the state realizes it (Ibid: 13),

Must recognize customary laws, norms and practices in the management of biological resources. Communities must also participate in the formulation of policies and legislation that affect biological resource for which they are responsible.

In order to implement this, however, the customary practices of the local communities, ZINATHA, both regional merchants and transnational pharmaceutical corporations, and both local and foreign scientists needed to have been made legible, 'in situ', to the bureaucratic body, the 'National Competent Authority', scheduled to oversee the legislation. However, whether there has been adequate translation of the customary roles, interests and practices of local agents and communities as well as other regional interests and practices is questionable, as a dispute over the *Swartzia madagascariensis* plant reveals

The case of the *Swartzia madagascariensis*

The isolation of the active medicinal ingredients of the *Swartzia madagascariensis* was the joint research efforts of scientists from a research team from Switzerland's University of Lausanne, the University of Zimbabwe (UZ) and ZINATHA. While the scientists at the University of Lausanne arranged to share a patent on the derived information with a United States pharmaceutical company, both ZINATHA and UZ scientists were left out because it was argued that they did not contribute to the requirements of a "novel" or "industrially-applicable" product that constitutes a patent (Biotech Trust 1999). However, because a contractual agreement existed, both neglected parties had a legal right to dispute the actions of the foreign scientists.⁷⁹ Yet, this same right to dispute would not be as accessible to individuals (many of them illiterate) responsible for the customary practices that both generate and maintain the base of TMK. Nor, under the current industrial property rights frameworks in the country, were any of the parties to the agreement accountable to the local customary interests over their cultural resources related to plant genetic resources.⁸⁰ This is the case because the right to private property is already guaranteed by the State. Further, the right to dispute whether a customary heritage may become property (even private) or not, however, should be a 'sui generis' right that needs to be formalized.⁸¹

⁷⁹This case was taken from a speech by Andrew Mushita (Commutech Officer) at the National Workshop on Intellectual Property Rights for Biotechnology. Harare, Zimbabwe. Biotechnology Trust of Zimbabwe (BTZ). Sept. 4-5, 2001. His speech was A "Case Study: UZ versus Lausanne University for the Medicinal Plant, *Swartzia Madagascariensis*."

⁸⁰ Industrial intellectual property rights such as patents, copyrights and trade secrets are already guaranteed under the African Regional Intellectual Property Organization (ARIPO). While the inclusion of biological resources such as medicinal plants requires new rights formulations, standard intellectual property rights already protect pharmaceutical corporations and scientists who create "novel" and "industrially-applicable" products.

⁸¹ The concept that some possessions are inalienable and not property that may be bought or sold is outlined as "market inalienability." See Radin (1987).

Entitling practice and norms

If the National Sui Generis Legislation embraces intellectual property rights along with other community or cultural rights for local communities it becomes a concern how this can be done without coercing the combination of two “fundamentally different legal systems” (Mohamed-Katerere 1996 cited in Magaisa). Especially, if TMK is viewed as a property it could override the ‘a priori’ practices of circulation and conservation already evident in the TMK system or, it could freeze the customary strategy of ‘keeping-while-giving’ TMK that accumulates symbolic capital for the healers disseminating TMK benefits to the greater community. Furthermore, the spiritual gift and duty of customary TMK custodians will be replaced with an economic liberty that denies responsibility for maintaining the larger TMK system. Further, if customs of the TMK system are to be relied upon to create entitlements, then we must recall the caveat Mamdani (1996) gave against a singular reliance on customary law that has misrepresented customary norms in the past.

Hence, taking all of this into consideration, to “realize a capacity for culture and to produce, reproduce and change the conditions and forms of their physical and social existence”... (AAA 1998 cited in Merry 2001: 46), specific individuals must be entitled with a cultural right to customary practices that produce, reproduce and change his or her given culture. However, this private right must be tempered also with collective rights recognizing the contributions of even minor participants in the TMK system. Recall that in the TMK system access begins through special relationships with elder kin who are *n’angas* and continues in the assistants’ dreaming and divinations. TMK is kept, *kuchengereta*, as an individual spiritual gift that requires rare circulation. Yet, the incentive for circulating practices based on TMK is not money but the continuation of

customary relationships, with elders, ancestral spirits, kin, community and elements of the environment. Further, when TMK is enacted in ritual, it reproduces cosmological symbols of the gift, magic, treasures and spiritual patronage for others in ways that constitute a collective identity (constituency). Additionally, while a deliberate mentorship sharing the most central intuitive aspects of TMK solidifies a special bond between a family's elders and children, the community still benefits. The community demonstrates that this is so when it confers symbolic capital, status and prestige on *n'angas* that benefit them in practice and service.

In this conception then, TMK is a cultural resource that is not just regulated in customary practice but “construes” custom and customary practice (Geertz 1983: 215). If it is then acknowledged that the culmination of these customary practices constitute an ‘*a priori*’ system of cultural production, reproduction and regulation, then a ‘cultural right to development’, stipulated by the United Nations Covenant on Economic, Cultural and Social Rights (1996), must be developed in a system of protections accordingly. Forming a protocol on the circulation of TMK would begin with the identification of consecrated *n'angas*, spirit-mediums, *makumbi* and other traditional authorities, men and women, as community leaders who should be recognized for possessing special roles in the TMK system.⁸² The ‘cultural right to development’ should also recognize the TMK system, as represented by these individuals, forms the ‘*a priori*’ collective right to sovereignty of communities reliant upon it. Thus, obtaining both the traditional authorities and their communities approval of following suggested guidelines would be prerequisite to any action formed by the ‘National Competent Authority’ scheduled for Zimbabwe’s

⁸² See also Posey and Dutfield (1996: 157-60) for this guideline as well as others contingent upon on-site context.

National Sui Generis Legislation. The follow suggestions I offer include entitlements to both customary and non-customary practices:

(1) Customary TMK custodians should have a cultural right to maintain their consecrated relations of access to the TMK that has not entered the public domain. Any parties interested in accessing this TMK should apply to the TMK custodians as heirs of it as a spiritual gift for access. Scientists, members of ZINATHA, *muti* merchants, foreign aid bodies, and State ministerial bodies seeking this TMK may access aspects of TMK by submitting an ‘application for access’. The customary TMK custodian should be recognized thus to have an ‘a priori’ spiritual and cultural authority that should be viewed as equal to a local political authority that represents community interests. The ‘application for access’ should provide informed consent that would include (i) the applicant’s interest in the TMK e.g. for general research, for product development, *ex situ* database collections, or for a ‘National Remedy’⁸³, (ii) any obligations or contracts prior to the application that may take precedence over obligations or agreements to TMK custodians and communities, (iii) plans for TMK product reproduction and the planned scope of distribution if it extends beyond local communities, (iv) a proposal of how the applicant intends to return benefits to the community.

(2) Customary TMK custodians should have a cultural right to safely keep, *kuchengetera*, TMK embodied in and according to his or her own practices, intuition, rituals and discretion. This should be conceived of as a private and ‘sui generis’ right that recognizes the inalienable nature of TMK *mapipi* and *hun’anga*. Needs associated with healer’s capacity in this regard should be primary to other interests including those of ZINATHA, the *muti* merchants and University of Zimbabwe scientists. A healer may

⁸³ (Ibid: 159)

work with other agents to either circulate TMK or educate with it, yet these partnerships should recognize that the custodian's sophisticated ritual, spiritual and magic techniques take customary precedence before his or herbal expertise.

(3) Customary and non-customary TMK custodians both should have a cultural right to use TMK for personal ends and subsistence. This would best be viewed as a user (*usufruct*) right that extends also to *muti* merchants or other urban and cosmopolitan Zimbabweans who presently use the TMK for general sale or practices. However, an entitlement to capacity should also accompany the rights of individual healers whose responsibilities simultaneously fulfill the community rights to health and culture. Each healer should therefore have a cultural right to access various endowments e.g. financial, political and educational, for themselves, for the communities they serve, and the practices they continue.

(4) Customary TMK custodians should have a cultural right to share their TMK solely with his or her descendants if they so choose. Or, alternatively they have the cultural right to share his or her TMK based on customary interests that may include, (1) the responsibility to return the benefits to the community (2) to create products that do not result in profit, (3) or in exchange for various forms of support to continue cultural practices. Some derivatives of TMK, like the one attached to the African Potato, are already common to Zimbabwe. Yet, arrangements to test this derivative of TMK further might be had with any one of the regional agents, but it is likely the results will be most accurate and effective if this were done in consultation with customary TMK custodians.

(5) Customary TMK custodians have a cultural right to be valued in their heritage and custodianship of TMK. This could only happen if they achieved equal standing with

scientists, merchants, and ZINATHA itself. Specifically, the *n'angas* and *spirit-mediums* need equal recognition from bureaucratic institutions, the media and urban constituencies as community spiritual authorities. However, so as not to undermine their spiritual and community roles, they should be entitled also to gain support through funds, not for themselves personally, but for the benefit of local community cultural resources and subsequently the national cultural heritage as well.

(6) Customary community members have a cultural right to collectively benefit from the derivatives of customary custodian's TMK. Yet, only if institutional support for TMK healers equals those already possessed by *muti* merchants, ZINATHA, and U of Z scientists can customary TMK custodians have space to continue to practice TMK for the benefit of local customary communities.

Conclusion

Intellectual property rights, even trade secrets, are inadequate with regard to protecting TMK as a cultural resource for customary interests because they are granted only to benefit and profit one individual perceived to be the only 'creator' of the protected product. In Zimbabwe, multiple parties should be able to create, practice and benefit from TMK. Intellectual property rights are also inappropriate for on-site, 'in situ', protection because they are formulated solely to protect products that represent innovation and industrial-applicability in the private industrial domains. This is biased because, to reiterate, TMK is a cultural resource that finds its utility in cultural practices opposed to products. Additionally, collective rights cannot singularly capture or support the customary arrangements of TMK for two reasons; (1) a 'collective' is only the State or a corporation according to international law and (2) collective rights would presume

that TMK is a social good and “common heritage” that may be indiscriminately be accessed, used, kept, shared and valued. Instead, TMK is both a prestige good that has customarily remained first in a tightly restricted (within the family) sphere of exchange and circulation before the privilege to practice it is shared with others. Both the prestige and practices build up personal TMK *mapipi* and *hun'anga*, but non-customary practices based on derivatives of TMK use elements of it in ways that suits the conditions of non-customary Zimbabweans.

Nonetheless, Zimbabwe is not entirely modern or transformed by international institutions yet. Therefore, the bundle of rights constituting ‘traditional resource rights’ cannot be effective on the ground when intellectual property rights effectively annul a cultural right that relies on customary practices that are opposed to property. Therefore, the Sui Generis National Legislation will need to recognize that only the ‘a priori’ cultural right to develop TMK as a cultural resource construing practices can encompass the most appropriate long-term and unique strategy of protection for the regional customary, and also, non-customary interests. The long-term effect of this strategy of entitlements to practice will be to re-embed a cultural authority over traditional medicinal knowledge in the territorial practices, relationships and individuals responsible for maintaining the reproduction of it as a cultural resource that the generations to come can still rely on. This ‘sui generis’ approach also poses, ultimately, the only absolute resistance to the inevitable dispersing and alienating effects of the transnational pharmaceutical cartels engaged in free-enterprise globalization supported by international legal conceptions and multi-lateral trade agreements. Particularly, because of its own deteriorating health situation, a nation like Zimbabwe cannot afford to allow the

international agenda to manage its cultural resources like traditional medicinal knowledge before it allow its own peoples to do this. Subsequently, Zimbabwe's own people must be entitled and recognized as having a stake in their TMK practices by the nation that represents them.

Appendix I: Historically produced distribution patterns

This appendix proposes that the derivatives of TMK have been distributed outside of the traditional patterns. While there is no literature that examines or suggests these variable distributions, based on my observations and the oral histories of informants I have found that there are some categorical patterns of TMK *mishonga* circulation that may be of use in considering the National Sui Generis Legislation and entitlements. These are delineated and elaborated upon as follows:

Common *mishonga*

"We all have some of the magic. When your tooth is aching it will stop for a while. But some magic when you put it there it will get off completely. Sometimes I get it off myself. The clinic is very far. The tooth is very painful. I find something to help myself before I go to the clinic to get it off. I say let me use that magic. Because that time before it helped me. I had the magic myself." ~ A mother of three, Tilbury Estates.

Common *mishonga* most likely come from parts of plants which are used to cure a common illness such as toothache, stomachache, headache, whooping cough, sore throat and/or malaria. These are more than likely known in full⁸⁴ by elders, and known partially by most of those individuals who have spent at least part of their childhood growing up in the rural areas. Broad familiarity with them is likely the product of both cosmopolitan movement as well as the transmission of the less rare traditional medicinal knowledge of most Shona elders. For instance I have found some of these *mishonga* in general health and pharmacy stores in the capital of Harare. They are packaged in forms both dried and whole, or in capsules.

⁸⁴ In other words, the elders know and can identify the actual plant, the part to use, where to find them, how to prepare them and then administer them according to code.

Regional and specialty *mishonga*

"One can say 'I'm going to Chipinge for you' when you want to tease and suggest that you are going to get a very powerful mishonga for revenge." ~ A marketing executive, Harare.

Knowledge of some types of potent *mishonga* can be in specific vegetative regions or environments. They are part of the *n'angas* reputation the patients' word of mouth can help market.⁸⁵ These are also *mishonga* that come from areas where *n'anga*'s competition with each other has increased their reputation in the region. Interestingly, two towns said to have strong *mishonga*, Binga, and Chipinge, are located in 'contact zones' near state borders.⁸⁶ Binga is found next to the marshes and wetlands along the Zambezi Escarpment where many of the Tonga interact with and speak with Zimbabwean Shona and Ndebele, Zambian Chewa, and Malawian Nanje. Chipinge is found in the highlands that straddle Mozambique and rests above South Africa. Both regions possess unique vegetation compared to high *veld* grassland and *kopje* granite outcroppings that characterize most of central Zimbabwe. The perception that these areas have strong *mishonga*, rather than strong *n'angas*, is a view a cosmopolitan might have of the entire region.

Totem mishonga

"TMK is a gift brought about by the shaves in my family, and it belongs to the family. It is just something that just establishes itself in the family and it cannot be taken away from the family." ~ The Manicaland ZINATHA Official.

More specific plants and animal parts coincide with particular families, and their clan or totem. The family heritage has evolved in conjunction with the natural vegetative heritage surrounding their home compound, the *kumusha*. If one is the relative of specific

⁸⁵ The patient marketing is characteristic of this system. In fact, a "good healer" called "godobori" will never need to boast or even suggest they have healing abilities.

⁸⁶ See Comaroff and Comaroff (1997) for elaboration of the characteristics of 'contact zones.'

n'anga from a specific area they should also have several *mishonga* in common. Recall Gelfands' (1963) "coming out" ceremony detailed in Chapter Two. Knowledge transmission is monitored by members of one family and therefore becomes consolidated in the nearby locale. Each *n'anga* I interviewed would cite different sets of medicines, different sets of trees used and different specialties in healing. If it was in the highlands of Mozambique or Zimbabwe there would be a different set of *mishonga* than the ones used in the low-*veld*, or even on the Zambezi Escarpment. This I was able to see more clearly as a result of interviewing different *n'angas* from different areas of Zimbabwe, including some who had emigrated from different areas of sub-Saharan Africa other than Zimbabwe. One *n'anga* from Malawi was only able to find similar medicines to the ones she had found in Malawi in a 2-hour drive north of Harare. As a result of these patterns, the locations of the *mishonga* needed could be as specific as 'one side of a *kopje*-hill where the large granite boulders are found.' This is because that type of plant only grows on such rocky surfaces where a lot of sun reaches it.

Reproduction and childbirth *mishonga*

Embodied and practiced specifically by elderly women *nyamakutas*⁸⁷, or *ambuyas*⁸⁸, this knowledge is passed inter-generationally among the women of a village, clan and totem. The utilities of these *mishonga* include the following: (1) for the pains and parturition of pregnancy; (2) to ease the child-birth delivery; (3) for the immediate health of the new-born child; and (4) the mothers' post-natal health. While there are some elaborate and specific knowledge about the appropriate ways for these *mishonga* to be

⁸⁷ The Shona name for a mid-wife

⁸⁸ The Shona name for grandmother, also the name of an elderly woman with status and respect who is often assumed to know the knowledge of the mid-wife, called the *nyamakuta*.

administered that only these elderly women know, other reproductive information dealing with fertility, and abortions are possessed by male healers as well. Traditionally, many to-be and new mothers would not make many decisions for themselves or their children, without the consultation of the *ambuya*, or *nyamakuta*. If she did, it could sometimes be interpreted negatively by the *ambuya*'s divination of the interests of *vadzimu* and *shave* and would be brought before the tribal council, or *dare*, as a transgression.

Environmental *mishonga*

"There was once a famous spirit-medium and healer named Milila who had lived during the early Colonial period just outside of Binga (found near the northern border of Zimbabwe, and on the shore of Lake Kariba). In that time much of the surrounding region, which contained marshy, highly-desired land, had been confiscated by the Colonial authorities. As a result of said bad cultivation practices there was a drought.

In order to correct this, the members of the community held a ceremony, called a bira, to pray, praise and appease the ancestral and/or totem, mhondoro, spirits that might have been angry about the land confiscation. The ceremony took place at night with dancing, drumming and possessions outside of a sacred hot spring. During the evening, the famous Milila, feeling advised by his own spirits, dove into the hot spring⁸⁹ only to come up again bearing several special mishonga. These included maize cobs to eat and seeds to plant, as well as several special charms and mixes for an insecticide on their remaining crops." ~ Story told by a *makumbi*, 23, Binga.

The environmental *mishonga* used to heal the environment can come from the same stock and sources as the *mishonga* used to heal people. In this case though female and male rain makers, the *manyosas* and *mbongas*, may specialize in this type of *mishonga* more specifically.

⁸⁹ Many stories tell of underwater spirit-mermaids, called *njuzu*, that bring wisdom and gifts. Bodies of water hold special and sacred importance then. Water and likewise forests are therefore regarded with a bit of respect and some fear as they are believed to be inhabited by these spirits who can bring both gifts, but only through some costs to the person involved.

Magic

Chavanduka (1997: 9) gives us a definition of what strictly magical *mishonga* may entail:

Magic is an art of obtaining mysterious results by tricks. Although some traditional healers use some aspects of magic in the treatment of such patients, they cannot be described as magicians. Such healers also use medicines and other methods of healing besides magic.

This category of *mishonga* are potent yet secretive in their identity as well as the trick of their utility and effects. These *mishonga* are carefully activated and cultivated vis-à-vis an interaction between the patients, the performance, their results, and the feedback. Most of the identified types of magic *mishonga* draw heavily upon the customary, *chivanu*, forms of socialization that may be seen with the preventative justice referred to in Chapter Two, or the traditional and spiritual notions crucial to Shona and Bantu cosmology. Many of them are therefore heavily associated with the golden age of Zimbabwe, *pasichigare*, as follows.

Deep, original *mishongas*

In several oral histories, I heard of some *mishonga* originally used only by kings and chiefs during *pasichigare*, for the following reasons: (1) to remain in power; (2) to be able to fight opponents and remain unchallenged; (3) to cause lightening to strike; (4) to overcome opponents; (5) as love potions and aphrodisiacs for a chief to attend to several wives sexually; (6) as women's aphrodisiacs, (7) as abortive medicines and (8) medicines to make woman appear virginal. These medicines are said to be the most potent and powerful of all the *mishonga* and therefore are known mostly by healers who have

descended from a well-known or royal line of heritage. This was attested to by one such *n'anga*, who claimed heritage from the royal bird totem.⁹⁰

Extending *mishonga*

This type of *mishonga* is among the most secretive of the original *mishonga*. Sometimes called *mashiripiri*, for amazing things, they have come also from the king's or chiefs' medicines and are used to manipulate another person or the environment in one's favor so that luck in physical strength, power, love, sex, theft, hunting, musical, writing talent, monetary success, verbal success overcomes any obstacle. Some very successful *n'angas*, the *godobori*, have obtained several of these types of *mishonga* and have thereby attracted many popular, powerful and wealthy clientele, among them politicians, musicians and artists.

Protecting *mishonga*

Medicines used by families and individuals to protect themselves from theft, evil spirits, lightening, or bad luck can be preventative justice *mishonga*. An example is the *Muti wokupisira* - burned to discover a stolen item.⁹¹ These are usually found in wealthy families with property and who intend to protect their assets. An informant spoke of how they would protect their house-compound, *kumusha*, from lightening that others may send because of jealousy, by placing broken eggshells around the perimeter. The threatening presence, imagined or otherwise, of harmful magic, *makona*, can also be protective and preventive by curbing the likelihood of transgressing behaviors. However, only the *n'anga* is likely in possession of this *mishonga*.

⁹⁰ The bird totem, *nezheshiri*, is called royal because it was believed to be associated with the original Rozvi Empire who inhabited what is now the Great Zimbabwe Ruins that was decorated by these bird figurines.

⁹¹ The smoke heads in the direction of the stolen item and the thief.

Innovated *mishonga*

Some individuals who have been exposed to traditional medicine but now reside in an urban setting have identified novel and useful medicines from their new milieu that includes an urban and technological environment. For instance, some *n'angas* for have begun to use televisions as divining devices.⁹² Others have used the powder of a battery for external relief of headaches. One informant suggested that *n'angas* with an *njuzu*⁹³ shave are more accepting of foreign and novel and are thereby more likely to incorporate modern things into their TMK repertoires and practices. Innovated *mishonga* clearly add to the value of the healer's repertoire in hybrid traditional-modern field, yet it is difficult to speculate their value scale on the international knowledge field.

Distribution, keeping and sharing patterns

Beginning with common *mishonga*, it is possible to see why the distributive patterns have evolved. Individuals with a common illness, e.g. cold, headache, toothache, or wounds are quickly told or shown a common treatment in an explicit and transparent way so that the sufferer may also later go and fetch a specific part of a specific medicine, know how to prepare it and then administer it.⁹⁴ These *mishonga* do not need to be dried or pounded for storage, *kachinkatwawanga*⁹⁵ and the administration of them is not part of a combination treatment and therefore less complex. Informants in both the rural areas and urban areas were able to cite these treatments.⁹⁶

⁹² See Reynolds (1992).

⁹³ The *njuzu* is considered an alien shave, because it is a mermaid and from a water world, not from the same place as elders who become the *mudzimu*.

⁹⁴ The transparency is evident because if the cure involves certain plant leaves, the direct use of the leaves, in a tea, or in porridge is demonstrated or spoken.

⁹⁵ Many plant *mishonga* are pounded in this ways so that their identity is obscured and remains a secret.

⁹⁶ These *mishonga* do not require elaborate ritual for their administration and therefore they are not the same as the valuable *mishonga* that has value in reproducing legitimacy and establishment of cultural,

Totem and family medicines, as has been demonstrated are directly shared with a younger kin. Traditionally, certain relationships are common: an aunt, *amai guru*, a grandmother, *gogo*, a grandfather, *sekuru*, or an uncle *baba mukuru*, will take one of their grandchildren or nieces and nephews, the *muzukuru* as a *makumbi*. The young children fetch and prepare the *mishonga* and the elders direct and dictate. This special family repertoire can often be a result of their origins in a particular environment. If these origins are the highlands of Zimbabwe then the *mishonga* will be different from the *mishonga* used in the low-grass (*veld*), or in the wetlands around the Zambezi Escarpment. I was able to see this pattern more clearly after interviewing different *n'angas* from different areas of Zimbabwe some having emigrated from different areas of sub-Saharan Africa other than Zimbabwe. One informant's oral history claimed there had been extreme consequences, including exile, for family members who revealed the trade-secrets" to a rival family. Moreover, these sanctions were said to have evolved from the rivalry of "magic-medicines" of the original chiefs, *ishes*, and *mambos*, kings.

The rivalries were the fuel for creation of ever more potent powers and magic said to be effective in manipulating the natural environment, other social actors and the outcome of events (Hove 1982: 9). This seems to linger today as one interview *n'anga*, who was also a *sadunhu*⁹⁷, charged fellow *n'angas* with both murder and witchcraft motivated by theft of another *n'anga*'s secrets. It appears then that some *n'angas* do not see each other as peers, but as rivals in their efforts to gain highest consecration.

Another oral history claims that many of the original *mishongas* had a highly gendered nature dealing with the traditional male domain in the following: (1) hunting

spiritual and cosmological authority. Holleman (1952) also writes of how prestige items have reproductive value and are therefore circulated differently.

⁹⁷ *Sadunhu* is the Shona term for the sub-chief of a rural ward.

success; (2) male virility and potency; (3) wife, and co-wife passivity⁹⁸; (4) uncontested power as a ruler; (5) and strength over any competitors in just about any given particular realm. However, it is not likely that only male *n'angas* possessed these special *mishonga*, as there are more female *n'angas* today, and many in the oral record as well. The *n'angas* would be the *gorobori*.

The other gendered *mishonga* deal with issues of sexual abstinence, abortions, childbirth, childcare and to some extent the appearance of virginity in women. This TMK belongs to the *nyamakuta*, often just called *ambuya*. As an exception to this domain being entirely dominated by female healers, I have also interviewed two male healers who specialize in curing infertile women, the “illness” being called *kuuchika*.⁹⁹

I noted two protective *mishonga* that can be found in the *muti* markets, Mbare, Pendanzahmo and Machipisa, in the capital, Harare. The first, the *chifumura* root, is a common protection against witchcraft and at the same time encourages good luck. Interestingly this *mishonga* seems to cater simultaneously to two perhaps previously contradictory cosmologies – witchcraft and luck. Witchcraft was formerly believed to be the cause of bad things. While good magic was the cause of good luck. Previously, the notion of luck was considered “bogus” and therefore any *n'anga* who presented “bad luck” as causative agent would be accused of “not telling the truth”. It seems that urban areas, as places of high uncertainty and high population density, draws many more events that are interpreted as bad luck, than in the rural areas, where “witchcraft” reigns still as a

⁹⁸ Zimbabwe has a history of polygamy.

⁹⁹ This domain of malfunctioning sexual reproductivity would likely be a realm the traditional male in Zimbabwe would like to have some control over to ensure the appearance of heirs and continuation of the patrilineal line.

cause.¹⁰⁰ The second protective *mishonga*, *dhupe* is less visible in the markets or in the rural areas. It is burned for bad dreams or to prevent *nezheshiri*.¹⁰¹ I hypothesize that the first *mishonga* is more common because the name of it is the same as the name of the actual tree it comes from, while the second is created from a type of tar or crystalline substance that is not clear. This aspect that is not transparent is part of the *mapipi*.

There were three types of extending *mishonga* that *muti* market merchants sell frequently as follows: (1) an herbal male viagra, *vhuka vhuka*; (2) a female libido mixture, *kashuga*; (3) and a mixture for love, *zhaka mina*. Being very popular, merchants have given these *mishonga* names that do not identify where the actual natural source of its active ingredients are. Now that these *mishonga* have a reputation, they have, like the African Potato, begun to be spread more commonly through the markets. Nonetheless, the merchants I met in Mbare market did not often know where their *mishonga* comes from and instead got their supplies from a distributor.¹⁰²

Conclusion

Common and innovative *mishonga* are less attached to the *mapipi*, *hun'anga* and traditional and spiritual rituals than some of the *mishonga* that deal with family heritages and child-birth. These common types have the greatest circulation. As a portable derivative then the pace of its movement is rapid. The other *mishonga* are increasingly difficult to find or access because they are more tightly kept in ritual, consecration and

¹⁰⁰ The urban, asecular, cosmopolitan and public spheres to which the *mishonga* have entered vis-à-vis merchants seem to accept luck, good or bad, but not curses or notions of magic.

¹⁰¹ 'Witch's familiars', *dzangadzimu*, can be crows, or hyenas sent on a mission from a witch. Examples found in Hove (1982). The personification and interpretation of animals and the environment in this way is highly typical. For instance, Shona proverbs speak of hare and the baboon with character and agency and illustrate the fact that there the relationships with elements of nature are continued in oral and, now, written traditions.

¹⁰² An *ambuya* distributes *mishonga* to *muti* merchants, yet keeps the details of the *mishonga*'s physical source and its preparation to herself.

communities by those who wish to keep the attached status - whether it is for their family, as a woman, or as a specialty. Being more rare the custodian of them would subsequently be in possession of more *valence*, weight, value and power that translates into symbolic capital than the other knowledge holders. The magic *mishonga* are among the most difficult to lift and unearth from their state of sedimentation in these knowledge holders. However, past colonial and missionary efforts to undermine the credibility of magic have and continue to shake the cores of *Mishonga ChiShona* custodianships. Finally, innovative and environmental *mishonga* are interesting because they haul more directly issues of utility, survival and necessity than do the acknowledged spiritual and symbolically rich magic *mishonga*.



Research Ethics Board Office
McGill University

tml

Research Ethics Board I
Certificate of Ethical Acceptability of Research Involving Humans

Project Title: Access to Traditional Medicinal Plant Knowledge in Zimbabwe

Applicant's Name: Chloe Frommer

Department: Anthropology

Academic Status: Graduate student

Supervisor: Dr. Carmen Lambert

This project was approved on April 23 2001 by

Expedited Review: _____

Full Review: ✓

Departmental review: For research projects that are carried out by undergraduate and graduate students as part of their course work – indicate course number:

(Department Chair)

(Signature)

The signatures below indicate that the project as described in this application is acceptable on ethical grounds.

1. _____
G.W. Wenzel, REB, I Chair (Geography)

2. _____
J. Galaty (Anthropology)

3. _____
G. Grant (Economics)

4. _____
P. Rains (Sociology)

5. _____
F. Sabetti (Political Science)

6. _____
C. Toulon (Faculty of Management)

7. _____
(Community Member)

8. _____
(Community Member)

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